
BEFORE THE
Federal Communications Commission
Washington, D. C.

Docket No. 6175

In re Application
of
NEWS SYNDICATE CO., INC.
New York, New York

For Construction Permit for an FM Station.

MEMORANDUM

in the nature of proposed findings submitted at the
direction of the Federal Communications Commission
by the

AMERICAN JEWISH CONGRESS

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**MEMORANDUM IN THE NATURE OF
PROPOSED FINDINGS**

Preliminary Statement

The American Jewish Congress, a New York membership corporation (hereinafter referred to as the AJC), has appeared in this proceeding for the purpose of opposing the grant of an FM radio license to the News Syndicate Co., Inc., publisher of the New York Daily News (hereinafter referred to as the Daily News). Pursuant to Section 1.195 of the Rules and Regulations of the Federal Communications Commission, AJC presented evidence in support of its contention and subsequently, pursuant to a directive of the FCC, was allowed to cross-examine the witnesses called on behalf of the Daily News.

Testimony relating to the position of the AJC was adduced on July 18th and 19th in New York and on September 30th, October 1st, 2nd and 3rd in Washington, D. C.

At the conclusion of the hearing the trial examiner directed the AJC to submit a memorandum in the nature of proposed findings of fact (3348).¹

In brief, AJC contends that the consistent bias and hostility displayed by the Daily News in its editorial and news columns against Jews and Negroes, its readiness to publish irresponsible and defamatory news items, and the convictions and beliefs disclosed in these proceedings by its executives renders the Daily News unfit to act as the trustees of a public medium of communication and that accordingly the Commission should not, in preference to more deserving applicants, award it a permit to construct and operate an FM radio station.

I. Freedom of Speech and Freedom of the Air

1. The AJC and freedom of speech.

No other aspect of the present controversy is of greater concern to the American Jewish Congress than the question of the consistency between its position in this proceeding and its unwavering attachment to the basic principles of the First Amendment. We wish to state at the outset that we are submitting the evidence we have gathered to the Commission because we are fully satisfied that the acceptance of the theory upon which we have proceeded will result in a fuller protection of the basic aims of free speech and free press.

Our legitimate interest in the elimination of anti-Semitic discrimination and anti-minority prejudice has never been conceived by us either as possessing an ideological autonomy or as having a possibility of achievement in a framework other than that of a free society. Our aims are full equality but we know that there can be no genuine equality where there is no freedom. Any short-range

¹ Page references herein are to the official stenographic transcript.

"gains" in the protection of minorities would be futile if they undermined the constitutional guarantees upon which the institutions of a free people are built. American minorities have no other weapon and no other hope than American freedom. The American Jewish Congress is no special-interest group and has never sought to achieve any illusory "advantage" for the group it represents at the expense of the general community. Jews, it has been said, are like other people—only more so. Our special interest, if any, in this case lies in the fact that we are twice, as Americans and as Jews, interested in the preservation of our common and basic freedom, freedom of speech, freedom of the press, and freedom of the air.

2. Free speech: competition and monopoly.

There are many mansions in the house of freedom. Freedom of speech from a soap box and freedom in a court room, freedom of fair political comment and freedom of teaching, freedom on a picket line and freedom before a microphone, are not necessarily coextensive in either scope or intensity.

To realize in what form the general principle of freedom of expression can manifest itself concretely as the freedom of the air we must keep in mind the specific origin of at least one of the prevailing conceptions of free speech. This conception is indeed only one of the manifestations of the philosophy of a great century which found another expression in the theory of the free market. Holmes' classical formula "the ultimate good desired is better reached by free trade in ideas—the best test of truth is the power of the thought to get itself accepted in the competition of the market", *Abrams v. U. S.*, 250 U. S. 616, 630 (1919), still bears the clear indication of its connection with the doctrine of *laissez faire* and the underlying assumption that, in a free struggle, the fittest will survive and the best idea triumph. Just as free competition in the economic field will achieve economic equilibrium, social and political equilibrium will be achieved by free trade in ideas.

Once adopted, however, the free market analogy must be fully pursued. No advocate of economic *laissez faire* has ever suggested that the theories of free competition and free play of the laws of supply and demand should be left untrammelled where no free market exist and where such free play is physically impossible. Adam Smith, himself, emphatically *excepted* natural monopolies from the purview of a doctrine which identified economic freedom with freedom from governmental interference. Where monopolistic power threatens the helpless or unwary consumer, the preservation of ideological symmetry and of a uniform definition of freedom will sacrifice the substance of liberty to its form. Faced with the fact of a natural monopoly and with the dangers of economic or intellectual exploitation, society, jealous of the substance of its liberty, will choose freedom *through*, not freedom *from* its government. *Laissez faire* means let the market alone, but has never meant let the monopoly alone.

3. Freedom of the air.

For broadcasting purposes, the air is a *natural monopoly* or at best a *natural oligopoly*. The maxim calling for the "market test of truth," for *laissez faire*, or for "free trade in ideas" sound ironical when applied to a medium of communication whose very existence would be in fact destroyed if the basic condition of free trade—"free access to the market"—were preserved. The competitive test of truth has no meaning in a forum in which not even one thousandth of one percent of the total population is permitted to own a voice of its own.

These hard facts of radio-life have long been recognized by our courts and commissions. The United States has already experimented with total "freedom" of broadcasting from governmental regulation. "The result was confusion and chaos. With everybody on the air, nobody could be heard." *National Broadcasting Co. v. United States*, 319 U. S. 190, 212 (1943). "The plight into which radio fell

prior to 1927 was attributable to certain basic facts about radio as a means of communication. Its facilities are limited; they are not available to all who may wish to use them; the radio spectrum is not large enough to accommodate everyone" (*id.* 213). "Unless Congress has exercised its power over interstate commerce to bring about allocation of available frequencies the result would have been an impairment of the effective use of these facilities by anyone." *Commission v. Sanders*, 309 U. S. 470, 474 (1940).

The truth of the matter is that the regulation of broadcasting must be predicated on and related to not only the congressional power over interstate commerce but also its power to protect freedom of speech as well. The freedom to listen is indeed the indispensable counterpart of the freedom to speak. *Martin v. Struthers*, 319 U. S. 141, and *Marsh v. State of Alabama*, 326 U. S. 501 (1945). The freedom to use the air for purposes of communication between those who speak and those who listen would be totally destroyed by unreasonable governmental inaction which, under certain circumstances, may become as grave an impairment of constitutional freedoms as affirmative action. "In enacting the Radio Act of 1927, the first comprehensive scheme of control over radio communication, Congress acted upon the knowledge that if the potentialities of radio were not to be wasted, regulation was essential." *National Broadcasting Company v. United States*, 319 U. S. 190, 213. Which means that if no regulation had taken place, the radio potentialities would have been wasted and freedom of the air denied to the country. A federal statute dealing mainly with economic matters, the Sherman Act, has been construed in at least one occasion as aiming at the protection of "free trade of ideas" as well. *A fortiori*, the standard of "public interest, convenience or necessity" contained in an Act dealing with communications only must be construed as aiming at the protection of interests "akin to if not identical with those pro-

tected by the First Amendment". Learned Hand, J., in *United States v. Associated Press*, 52 Fed. Sup. 362, affirmed 326 U. S. 1.

In the field of radio communications, just as in any other field of human interchange of ideas, the basic aims and purposes of the First Amendment must be preserved. On the air, as elsewhere, communication must give the people adequate knowledge of public issues; enable them to make a free, that is to say uncoerced, informed and enlightened, choice between various opinions and courses of action; elevate their cultural, aesthetic, and moral level; enable them to exercise their political rights intelligently; and to fulfill their political duties and responsibilities. The aims remain the same and the substance of liberty remains identical. But the achievement of those aims in the field of broadcasting can be assured only through, and with the help of governmental action and cannot be brought about by the simpler device of governmental abstention. Therein lies the great difficulty with which a government is faced when it is determined neither to usurp the ultimate choice which must rest with the people nor to abdicate its duty to protect that people from a similar, and less warranted, usurpation by monopolistic private licensees and their customers, who have received no popular mandate, and bear no political responsibility to anyone.

4. Private trustees of a public interest.

In facing this difficulty, the choice must be made between an affirmative or negative prior control, or censorship, of the specific content of the programs and the grant of a wide discretion to the licensees in the exercise of the public trust with which they have been vested. Congress has chosen the latter alternative and proscribed all censorship of specific programs by the Commission. The primary, the basic responsibility, the gravamen of the public trust, has been left not with the Commission but with the private licensee. The Commission has consistently recognized this

special position of the station owner and has never attempted to substitute its own criteria of operation for those of the broadcaster: "Under the American system of broadcasting, it is clear that responsibility for the conduct of a broadcast station must rest initially with the broadcaster." *In re Mayflower Broadcasting Co.*, 8 F. C. C. 333, 339 (1940). The only form in which public regulation can manifest itself in the United States is the setting up of general criteria of performance and the selection of licensees who can be expected to live up to these criteria and be worthy of the widely discretionary public trust they are seeking from the Commission.

In this sense the Federal Communications Commission has much less power than other administrative regulatory agencies. The Interstate Commerce Commission may, for instance, prescribe not only the rates but the forms of service it expects from the operators. The routes, the schedules, the number of cars, the frequency of the stops, the type of freight, the extension or the abandonment of branch lines, even the treatment of personnel, are under the direct supervision of that agency. The Federal Communications Commission has no comparable powers. Once a license is granted, the licensee remains practically free in his operations. The Federal Communications Commission regulatory requirements and standards are general in form and the Commission has only a very limited power, if any, to issue specific directives to the licensee with respect to his program, be they affirmative in nature or couched in a cease and desist order. *The Commission's only real possibility of assuring broadcasting in the public interest and of enforcing respect for its general standards of operation, is to perform its paramount duty and function, that of selection of trustworthy licensees, with utmost care and on the basis of a thoroughgoing inquiry into the ability of the licensee to serve the First Amendment's basic aims of information, discussion and enlightenment.*

The United States has adopted a unique system of radio regulations unparalleled in other countries. It is a most daring experiment, substantially based on the belief that a properly selected set of private licensees prompted by the profit motive is capable of performing a delicate public duty and serving public interest, convenience and necessity in an area as vital for the political and cultural life of a country as that of formation of public opinion and public taste through the medium of mass communications. The success or failure of this experiment based on a great confidence in responsible private enterprise will obviously depend on whether or not the Federal Communications Commission will succeed or fail in establishing minimum ethical and cultural standards of performance and in selecting licensees who can reasonably be expected to live up to such standards and thus serve the public interest. Where there is no genuine competition tending to control standards, the task of creating standards and checking the monopolistic power of the franchise holder falls upon the regulatory agency. To be able to select only those licensees from whom adherence to such standards can be reasonably expected, the Commission must inquire into the specific communications background of the applicants and examine their past performances, particularly in the areas of public information, education of public taste and enlightenment of public opinion. The evidence introduced by the AJC bearing on the character of newspaper activity of one of the applicants, the Daily News, is an illustration of the inquiries which must precede an informed and successful selection.

5. A "momentous issue".

The Daily News has objected, however, to the introduction of such evidence and has claimed that it is inconsistent with the provisions of the First Amendment and hence inadmissible.

The objection of the Daily News cannot possibly mean that to deny it an FM license is to deprive it of free speech. Whenever there are more applicants than available channels, some of them will inevitably be "deprived of free speech." In the present proceeding, for instance, there are seventeen applicants for the available five channels: hence there must be twelve denials of freedom to broadcast. Our evidence only tends to show that it is more proper to classify the Daily News with the rejected twelve than with the privileged five.

Since the Daily News claims no special privileges under the Constitution, its objection must deal not with the purpose for which our evidence has been introduced but with its nature; not with the possibility of denial of a license but with the reasons adduced for it. From the oral argument of its counsel it is apparent that the Daily News challenges the power of the Federal Communications Commission (a) to predicate its decision on the content of the broadcasts which may be expected from the applicants; (b) to take into account the applicants' past performances in the communications field and more especially their activities as publishers or owners of newspapers.

This challenge goes, therefore, to what we have shown to be the very heart of the regulatory power of the Federal Communications Commission. By challenging the power to select applicants with a view to their capacity to serve the public need for genuine and unbiased information and debate, the challenge threatens the prime condition on which the American experiment in radio regulation hinges. Therefore, without raising the question as to whether or not the Daily News has, as a corporation, the right to invoke the protection of the First Amendment,² we shall examine the merits of what the Daily News counsel correctly describes as a "momentous issue" (1398).

² In *American League of the Friends of the New Germany of Hudson County v. Eastmead*, 116 N. J. Eq. 487, 174 A. 156 (1934), it was held that state constitutional provisions relating to freedom of speech and assembly include rights guaranteed only to natural persons and do not apply to corporations. Cf. *Paul v. Virginia*, 8 Wall. 168, 177 (1868).

6. The choice among competing applicants.

We believe that the preceding discussion of the nature of the free speech doctrine and of the essential constitutional and political purposes of the Federal Communications Act are sufficient to show the socially dangerous and logically untenable character of the Daily News argument. We shall, at this point, add only the proof of their inconsistency with settled constitutional principles.

The United States Supreme Court has expressly stated that the Federal Communications Commission has broad regulatory powers: "While Congress did not give the Commission unfettered discretion to regulate all phases of the radio industry, it did not frustrate the purposes for which the Communications Act of 1934 was brought into being by attempting an itemized catalogue of the specific manifestations of the general problems for the solution of which it was establishing a regulatory agency." *National Broadcasting Company v. United States*, 319 U. S. 190, 219 (1943).

"The touchstone provided by Congress was the 'public interest, convenience, or necessity,' a criterion which 'is as concrete as the complicated factors for judgment in such a field of delegated authority permits.'" *National Broadcasting Company v. United States*, 319 U. S. 190, 216 (1943).

The Supreme Court has also expressly repudiated the fallacious notion that the Commission is permitted to pass on the technological and financial qualifications of the applicants but not on their moral and intellectual competence; or that it may set up strict engineering standards of service, but no standards pertaining to the content and quality of service.

"The Act itself establishes that the Commission's powers are not limited to the engineering and technical aspects of regulation of radio communication. Yet we are asked to regard the Commission as a kind of traffic officer, policing the wave lengths to prevent stations from interfering with each other. But the Act does not restrict the Commission merely to supervision of the traffic. It puts upon the

Commission the burden of determining the composition of that traffic. The facilities of radio are not large enough to accommodate all who wish to use them. Methods must be devised for choosing from among the many who apply." *National Broadcasting Company v. United States*, 319 U. S. 190, 215, 216 (1943).³

The Court thinks, in other words, that if it has to make a choice, it may as well make an intelligent one. And no intelligent choice would be possible if, in the selection of prospective trustees of a mass communication service, their intellectual and moral qualifications were barred from the consideration of the selecting agency. It is just because the Commission may not directly control the veracity of the individual statements before they are broadcast from a station (this would be censorship) "caution must be exercised to grant station licenses only to those persons whose statements are trustworthy." *In re Western Gateway Corp.*, 9 F. C. C. 92, at p. 102.

The Commission has often asserted its power to go beyond the merely technical and financial qualifications. Its recently published report, entitled *Public Service Responsibility of Broadcast Licensees* (March 7, 1946) contains a complete collection of legislative, administrative and judicial authority on this point and it would serve no useful purpose to set them forth again. From the Commission's first Annual Report (1928, p. 161) to the express statements of congressional leaders who, in introducing the 1934 Communications Act, called upon the Commission "to take the steps it ought to take to see to it that a larger use is made of radio facilities for education and religious purposes" (78 Cong. Rec. 8843); from the discussions of the Commission and federal courts calling for examination of the "nature and character of the program service rendered" (*In re McGlashan et al.*, 2 F. C. C. 145, 149; *KFKB Broadcasting Association v. F. C. C.*, 47 F. 2d 670) and asserting the "duty" of the Commission "to take notice of

³ All emphasis in quotations appearing in this Memorandum has been added by us, unless otherwise indicated.

the [applicant's] conduct" (*Trinity Methodist Church v. F. C. C.*, 62 F. 2d 850) to the rhetorical questions asked by the Supreme Court as to "how could the Commission choose between two applicants" equally qualified from the financial and technical viewpoint "if the criterion of public interest were limited to such matters" (*National Broadcasting Company v. U. S.*, 319 U. S. 190, 216, 217)—the authorities represent one unbroken line tending to make sure that the Federal Communications Commission is put in the position of being able to select licensees from whom service in the public interest can be expected.

It is noteworthy that the radio industry itself has not doubted the power of the Commission to take into account program service. In testifying before the House Committee on Interstate Commerce, the National Association of Broadcasters stated:

"It is the manifest duty of the licensing authority, in passing upon applications for licenses or the renewal thereof, to determine whether or not the applicant is rendering or can render an adequate public service. Such service necessarily includes broadcasting of a considerable proportion of programs devoted to educational, religion, labor, agricultural and similar activities concerned with human betterment" (Hearings on H. R. 8301, 73rd Cong., p. 117).

The Daily News itself has not doubted the relevance of its broadcasting policies and has made ample representation as to the type of programs it intends to broadcast and as to the general civic policy it intends to follow (Exh. 2, Secs. 8, 26). It was not until the credibility of the Daily News allegations, representations and promises was challenged by our petition to intervene that the Daily News has advanced the claim of inadmissibility of the policy and character questions it had itself put in issue.

7. Original grants and prior conduct.

We have thus seen not only that the constitutional objection raised by the Daily News cannot be directed against

the mere fact of denial of a license to broadcast, but also that it cannot be directed against the examination of the content of the prospective service by the applicants.

It is equally obvious, however, that the Daily News cannot object to an inquiry into past conduct in order to test the qualifications of the applicants and the degree of reliance that can be placed on their promises. If a judgment about the future performance is to be made, past conduct must be considered. There can be, of course, no evidence of future conduct except that based on inferences drawn from the past. The exclusion of past conduct from the Commission's consideration would necessarily reduce the whole proceeding to a perfunctory finding that the applicant does now make certain allegations and promises, all investigation of the performance of past promises being strictly irrelevant!

This conclusion being obviously absurd, we must now examine the possibility that the original broad constitutional objection of the Daily News can be construed as contending only the inadmissibility of evidence of past conduct in fields other than broadcasting.

This contention is, however, untenable mainly because it would of necessity limit the Commission's power of informed and intelligent selection to the renewal application, excluding it from the all important field of original grants. The theory would violate the Act itself which does not distinguish between grant and renewal and certainly does not limit the requirement of "public interest, convenience and necessity" to renewals. Counsel for the Daily News has put it very well when he said:

"The Act says that the same principles shall apply on renewal as apply on original grants" (1401).

He will not disagree with us when we say conversely, that the same principles shall apply on original grants as apply on renewals: the applicant's past conduct must be taken into account in order to determine his willingness and ability to serve the public interest.

The broadcasting industry has also expressly asserted that no distinction can be made between renewals and original grants. In the already quoted passage of its statement to the House Committee on Interstate Commerce, the National Association of Broadcasters said:

*"It is the manifest duty of the licensing authority, in passing upon applications for licenses or renewal thereof, to determine whether or not the applicant is rendering or can render adequate public service. Such service necessarily includes broadcasting * * * devoted to * * * human betterment"* (Hearings on H. R. 8301, 73rd Cong., p. 117, emphasis supplied).

If the capacity of a new applicant who has no broadcasting record, to render public service by adequately informing the public and promoting cultural and moral human betterment, is to be tested, how can it be done except by examining his conduct in fields other than broadcasting?

B. The renewal inertia.

It will certainly not do to give every new applicant a chance to operate the station and then judge him by his performance. First of all, the problem who should get that "chance," the Daily News or another applicant, would still have to be solved. Secondly, it would be wasteful and dangerous to make first grants indiscriminately and then try to remedy the situation by refusals to renew. Finally, the lack of discrimination in original grants would in itself lower the general level of performance and the natural desire not to upset existing patterns too radically by frequent refusals to renew and not to destroy important financial investment would tend to perpetuate lower standards. The inevitable tendency in a renewal proceeding is to ascertain whether or not the license holder has abused its grant, not whether or not he is the best possible licensee available. The radio industry has done its level best to further that tendency. In the words of the American Civil Liberties Union—"the opposition of the industry is evi-

dently based not so much on fear of censorship, as its spokesmen allege, as on the idea that radio licenses once granted become a vested private interest over which licensees alone should have control, except in cases of flagrant misuse of their privileges" (Radio Programs in the Public Interest, American Civil Liberties Union, July, 1946). While obviously this approach must be opposed, it would be unrealistic not to count with the existence of a natural renewal interia, cf. *WOKO v. F. C. C.*, 153 F. 2d 623 (1946), and neglect the strongest and most direct means to assure service in the public interest, i.e., the selection of *original grantees* whose capacity for public service is beyond reasonable doubt.

9. Special privilege for the Fourth Estate?

Having shown that it is impossible and legally unsound to limit examination of the applicants' qualifications to their past use of radio licenses, we are now faced with the *minimum residual meaning* of the Daily News' sweeping challenge, i.e., with the contention that the examination of the editorial policies or patterns of news selections of *newspaper applicants* for radio stations is a violation of their constitutional immunity from censorship.

If this contention were accepted by the Commission it would create the paradoxical situation that newspapers alone, among all applicants, would be exempted from the obligation to show that they are intellectually and morally qualified to become the holders of an important public trust. We are not here concerned with the desirability of concentrating in the same hands several major media of communication. It may or may not be desirable that a newspaper should own and control AM, FM and television and facsimile channels. *But it is certainly inconceivable that the position of power which newspapers hold in the field of public information and formation of public taste and opinion should be used as an argument for their exemption from an inquiry to which all other applicants would be*

subjected. After all, the First Amendment applies not only to newspapers. All citizens—and aliens as well for that matter—enjoy the right of voicing their opinions and exchanging news and ideas. No one can be deprived of that freedom except in the case of a "clear and present danger of substantive evil." But everyone's use of that freedom can be examined when a selection must be made and a public trust confided to those who have given evidence of higher standards of accuracy, veracity and objectivity. Newspapers have applied and obtained a growing number of available radio channels. The whole system of inquiry into the intellectual and moral qualifications of original grantees would break down if so important a segment of licensees as the newspapers are, were granted an exemption. Newspapers—and the rest of us as well—may have a constitutional right to be prejudiced, biased, unfair, inaccurate and, within limits, even mendacious. But none of us—not even newspapers—have a constitutional right to obtain a public trust despite such prejudice, bias, unfairness, inaccuracy and mendacity. As Justice Holmes has put it once—and in a much more questionable case—"he has a constitutional right to talk politics, but he has no constitutional right to be a policeman." *McAuliffe v. Mayor of New Bedford*, 155 Mass. 216, 29 N. E. 517 (1892).

A man may have a constitutional right to try to misinform, mislead, and miseducate the public as long as he operates in a competitive field open to anyone who wishes to pursue a different policy. But he has no constitutional right to be preferred in his demand for a monopolistic or oligopolistic public franchise in a field of a restricted communications media.

10. "Our policy will carry over."

Quite aside from the general principle of relevancy of newspaper policies, the Daily News has made the examination of its policies inevitable in the present proceeding. By the manner in which it has tried to support its applica-

tion, it has, here again, put its newspaper activities and performances in issue and cannot now escape their examination. This is not, as counsel for the Daily News thought, a "technical question of cross-examination" (1411). It goes to the very heart of the Daily News direct case which is based on its newspaper performances and which must fail if evidence of these performances is withdrawn or if they are shown to fall below certain minimum standards. Section 8 of Daily News Exhibit 2 opens with the following solemn statement:

"We consider the right to operate a broadcast station as a responsibility as well as an opportunity. Our policy on the News has been that we are a medium for public welfare and community interest, as well as a dispenser of news. THIS POLICY WILL CARRY OVER TO THE RADIO STATION."

The Daily News sought to persuade the Commission that its service as a newspaper justified the granting of an FM license. Since the Daily News relies upon such service as justification for the granting of the permit and since it promises that "*This policy will carry over to the radio station,*" it is eminently appropriate to examine its record to determine whether it has the qualifications justifying the granting of a construction permit. The Presiding Officer, in overruling the Daily News' constitutional objection, thus summarized the situation:

"I can only say, gentlemen, that the applicant, News Syndicate Co., Inc., has presented a case, a substantial portion of which does deal with the circulation of The Daily News throughout the country, the Daily News in public service, and it has introduced evidence of its participation in the many worth-while and worthy causes. A good portion of the direct case constituted a presentation of material designed to show why the News Syndicate Co., Inc., would be qualified to run a radio station. It seems to me that it is perfectly appropriate to examine into what the applicant, who is a newspaper, does with his newspaper" (1411).

On cross-examination the Daily News executives made it clear that they would be responsible for carrying out the policies of the television (1393) and FM stations (1394) if those licenses were granted.

In answer to a specific question, F. M. Flynn, the general manager of the Daily News, stated that the News "*undoubtedly* would set the broad policies" of the FM station (1394) and has also, in substance, agreed that it expects to achieve there "*the same standards* of truthfulness and accuracy and freedom from bias" achieved in the Daily News' newspaper activity (1396).

The examination of Carl Warren, the Daily News "broadcast editor" (1435) responsible for the WNEW copy (1436), has thrown further light on the chain of continuity that links the Daily News to the WNEW newscasts and would link the latter to the FM station. In response to a question from the Presiding Officer, Mr. Warren testified that a news story originating in the Washington office of the Daily News is put on a "leased wire" in Washington and that it comes "right to [our] broadcast room in the Daily News building"; that "it arrives over a teletypewriter machine * * * and is available to the broadcast desk as well as to the telegraph desk and other desks which handle it" (1441). It is thus clear that the WNEW newscasts are fed from the general newspaper sources of the Daily News. In its turn, the staff of the WNEW newscast is destined to service the Daily News' FM station. "The same men who now service WNEW would service the newscast portion of the FM station, if the Daily News ever gets one" (1436). Mr. Warren who now "assumes responsibility for the copy on the WNEW newscasts" (1436) expects "to achieve *the same* high standards of accuracy and freedom from bias in the operation of the newscasts on the FM" (1442).

The record is replete with similar statements showing the close connection, asserted by the Daily News itself, between its past and present newspaper patterns, performances, standards and policies and the future policies of the

prospective FM station. It would serve no useful purpose to quote them all; they are but illustrations of the basic confession made by the News itself: "This policy will carry over to the radio station." Can it be seriously maintained that, before letting that policy "carry over," the Commission is entitled to find out *what* that policy is and to decide whether it is consistent with certain minimum standards of service in the public interest?

11. Drawing the line; an unreal issue.

What are then, finally, these minimum standards of public service to which the applicant for a franchise must be expected to adhere? We are fully aware that it is on this issue that the line must be drawn between an odious political or partisan censorship leading to the domination of the air by an oligarchic government-sponsored group, on the one hand, and an honest and impartial effort to assure genuine freedom of the air *despite* the technologically inevitable oligopolistic structure of the broadcasting industry, on the other.

The difficulty of drawing the line pursues every student of law from his first classes in Torts where he tries to master the law of negligence, through the quicksands of equity to the problems of due process. At times the difficulties in drawing the line and the fear of arbitrariness by administrators, jurors, or judges, are such that society is tempted to do nothing rather than do something imperfectly or crudely; to choose the legal certainty of inaction rather than risk an intervention based on discretion. Judges and administrators feel this escapist temptation frequently, but yield to it only rarely—and even more rarely with good results. In no case, at any rate, could the results of an "escape into the certainties of inaction" be more disastrous than in the field of minimum fair broadcasting standards. The inevitable result would be that a broadcasting of business, by business, and for business would take over a task, entrusted by Congress to a responsible public agency.

Moreover, the hue and cry of people who do not know where to draw the line often refers to wholly imaginary difficulties which arise only in a few borderline cases, while the bulk can be adjudged without difficulty. It is clear, for instance, that the Commission would violate the First Amendment if it made the grant of a license dependent on whether or not a newspaper has supported a Republican or Democratic candidate or been for or against the New Deal. But is it not equally clear that the First Amendment is not violated if the grant of a public trust is made dependent on whether or not a newspaper is trustworthy, truthful, devoted to public welfare and free from racial or religious bias? The fact that difficult borderline cases may arise here, as elsewhere, in the future is certainly no reason to deny a clear answer in the clear "polar" case.

12. *Ex ore tuo te judico.*

That this is a "polar" case is made fully apparent by the fact that the Commission could accept without hesitation the minimum fair standards and policies of decent broadcasting set forth by the Daily News itself. We certainly would be ready to stipulate that its past performances be judged exclusively on the basis of the criteria of its own making.

Whatever the difficulties of hypothetical cases, the Daily News can have no avowable reason to oppose an investigation based on criteria, the promised adherence to which has been set forth by the Daily News itself as the compelling reason in support of an application for a radio station. *Ex ore tuo te judico*, we say to the Daily News: we judge you by your own words.

The Daily News has used effective language in its application when it said that "The important position of a radio station in the life of the community with *its power to entertain, instruct and inform*, necessitates a policy of operation that is progressive, instructive, entertaining, *without bias* and always in good taste" (Exh. 2, Sec. 26, p. 1). It

has also listed the following pertinent "Basic Program Policies:

- 1) The name and word of God must be used with reverence.
- 2) Treat all races, colors and creeds fairly, without prejudice or ridicule.
- 3) Bar all profanity and salacious material from all productions.
- 4) Avoid detail of murder or suicide.
- 5) Avoid all forms of misrepresentation and false and misleading statements."

We accept these standards and submit that our evidence will show that in its past newspaper performances the Daily News has failed to live up to them, and that it, as a newspaper, has (a) indulged in inaccurate, malicious and biased misrepresentations of the role of ethnic minorities in American life, and (b) has printed about them more unfavorable and less favorable news than the other New York City morning newspapers. We believe that these facts, if proved, would show a clear violation of the second and fifth principles stated by the Daily News, being respectively fair treatment of all races, colors and creeds; and avoidance of false or misleading statements. Therefore, and since the Daily News has promised, or rather threatened, that its policy "will carry over to the radio station" the grant of a franchise would not be, on the strength of the News' own standards, in the "public interest, convenience and necessity," and should therefore be denied.

13. Past performances and present beliefs.

We must, finally, call the attention of the Commission to the fact that our evidence deals not only with *past* performances of the Daily News, against which the objection of inadmissibility has been raised, but tends also to point

out some of the *present* beliefs and conceptions of the Daily News executives with respect to what constitutes proper standards of radio performance. These beliefs and conceptions, admitted and confessed by the Daily News representatives themselves, are concededly admissible and relevant evidence. To the extent to which they contradict the initial assurances and representations of the Daily News they are in themselves sufficient to show the lack of necessary qualifications and, because of their gross departure from the generally accepted standards of fairness, must inevitably lead to the denial of the Daily News application.

II. The Daily News Image of the American Jew

1. The two parts of the AJC study.

The evidence we have introduced consists of two independent parts. The first part deals with the Daily News editorials and opinion columns, the second with its general news columns. The first part does not attempt to measure the Daily News policy in quantitative terms but rather to convey an image of the Daily News attitude towards the Jewish problem. The second makes no qualitative appraisal but presents figures on the distribution of favorable and unfavorable news items concerning Negroes and Jews. The first part concerns the Daily News opinions and editorials in themselves, the second compares the distribution of news stories in the various New York morning newspapers. Finally, the first part is based on a selection of editorials and columns over a period of eight years, ranging from the post-Munich Fall of 1938 until July of 1946, the beginning of the present hearing, while the second part is an analysis concentrated on a sample period of six months.

2. 1938-1946, a homogeneous period.

To counter the first part of our evidence, i.e., the Daily News editorials and opinion columns (Exh. 19, Sec. 2A

through 2T), the Daily News, in its turn, introduced a volume entitled "Editorials from the New York Daily News showing non-discriminatory attitude on religious questions" (Exh. 2, Sec. 51) designed to complete the picture and to counteract our exhibits. This counter-evidence is, of course, perfectly legitimate; we welcome it and shall, in presenting the picture of the Daily News attitude towards the Jews, take into the fullest account both our Exhibit 19, Section 2, and the Daily News Exhibit 2, Section 51. We shall, however, limit our investigation to the above-mentioned period of about eight years to which our case has been confined from the beginning. We received no notice of the Daily News intention to cover the last two decades of its editorials until the last hour of the hearing, when the volume marked Section 51 was introduced in evidence (3337), and had no opportunity to make an examination of our own of the period between 1926 and 1938. Furthermore, we believe that a study of the two decades would spread itself too thinly and yield no relevant results. Newspapers' personalities and attitudes change considerably in the course of decades. The Chicago Tribune was, at one time in American history, the most radical of American newspapers. The Daily News of the pre-Munich days was a newspaper supporting the New Deal and the Roosevelt administration, a quite different Daily News. The change did not, of course, come about in one day and the about-face did not become fully apparent before the winter of 1940. We submit, however, that the evolution must have been in the making for some time and that it is reasonable, historically, and is fair to the Daily News to select the fateful Fall of 1938 as the dividing line. This selection, not challenged by the Daily News, is historically sound. The Munich Conference and the subsequent developments put the problem of Hitler into full focus and made the inevitability of an armed conflict between the Axis and the democracies clearly apparent. The issues and the problem before the News and, particularly,

its attitudes towards them were substantially similar in the last eight years, which is thus a period sufficiently homogeneous for the purposes of the present inquiry aimed at the discovery of the Daily News image of the American Jew.

3. Techniques.

Before examining that image it is necessary to become familiar with the techniques used by the Daily News in the creation of that image. The Daily News editorials and opinion columns have utilized so many of the means and devices, known to the old and modern masters of persuasion, defamation and propaganda as to require some preliminary remarks.

a) "*So sorry: it was a mistake.*" The boldest device of a propagandist, to be used, of course, rather sparingly, is the lie-direct. In its less risky manifestations it takes the "so-sorry" or calumny-and-retraction form. A story can be as concededly false as that about General Patton slapping a Jewish soldier (Exh. 19, Sec. 20) or about President Truman asking four Supreme Court Justices to resign (Exh. 19, Sec. 28). Still, if the denial is buried in a crackpot column such as the "Voice of the People" (Exh. 19, Sec. 2P), if the retraction is conveniently delayed and limited to the specific anecdote rather than to the thesis (Exh. 19, Sec. 2R), if even a timely Presidential rebuff does not compel the withdrawal of the story but is just pitched against it as one "no" against one "yes"—the original stories are capable of preserving most of their impact on the readers' minds. *Calomniez toujours—il en restera quelque chose*, the old master said, "Keep libeling, something will always stick!"

b) "*Some people say awful things.*" Libel by indirection, however, possesses a superior effectiveness of which the News is well aware. A straight accusation sounds much less convincing than a bit of information thrown out

on an apparently innocent, even if completely invented, occasion. A headline, "New Deal Probes Anti-Semitic Drive" (Exh. 19, Sec. 2A), even if in fact wholly untrue, lends respectability to a story whose content would have been more candidly disclosed but less persuasively conveyed by a headline, "Too many Jews in Government." The same theme, Jews in Government, can be presented as originating from the charges of an ex-convict, Pelley of the Silver Shirts (Exh. 19, Sec. 2A); from "a number of letters" (Exh. 19, Sec. 2E); and, finally, "openly, and from public men" (Exh. 19, Sec. 2D). Another issue, the Jews having dragged the U. S. A. into the war to avenge Hitler's persecutions, can be presented as coming from "most of our anti-Semites" (Ex. 2, Sec. 51; Sept. 24, 1940 editorial); from a "whispering campaign" (Exh. 19, Sec. 51; Mar. 13, 1941 editorial); from "Lindbergh" (Exh. 19, Sec. 2I) or, finally, from "many people (who) feel it started largely because of Hitler's savage persecution of Jews" (Exh. 19, Sec. 2G).

c) "*We only say could be.*" Defamation hits the hardest when it comes from, or is reported by an apparently impartial and cautious source, "on the whole friendly" to the victim. A beginning like "I hate to repeat this awful thing about a friend of mine but * * *"; a reservation "I personally think it is rather a tribute than an insult but"; or a conclusion that "of course we are only human and it was quite natural"—are classical devices calculated to enhance the prestige of the "impartial" narrator and the credibility of the story.

Thus, after having given wide publicity to a charge, the Daily News can say that it was printed just "as another illustration of the anti-Semitic wave now building up here" and that, any way, the charge "looked to us more like a tribute than an insult" (Exh. 2, Sec. 51; Dec. 16, 1938 editorial). It will from time to time remind the reader that some of its favorite political candidates are Jews (cf. Exh. 19, Sec. 2F, and Exh. 2, Sec. 51, Dec. 16, 1938).

It will repeatedly concede that Jewish endeavors to avenge their kinfolks by throwing American might against Hitler is due only to "natural sympathy" (Exh. 2, Sec. 51, Jan. 16, 1940) of the Jews who would be otherwise "less than human" (Exh. 2, Sec. 51, Jan. 16, 1940). Its best device will be to confine itself to recitals of deceptive objectivity about which it could repeat what it said about another and unrelated matter: "We don't pontificate on the long standing charge * * * we only say could be" (Exh. 19, Sec. 2I).

d) "*Don't nail his ears to the post.*" To spread a rumor by building a strawman and "fighting" him; to "damn with faint praise"; or to couple recitals of precise charges with denials "pregnant with admissions"—are too well known devices to be commented upon in detail. To say, for instance, that "*racial faults* the Old World Jews have displayed *are disappearing* in the American melting pot" (Dec. 16, 1938), that "anti-Semitism in this country is not due *so much* to the actions of the Jews here" (Jan. 16, 1940) or to declaim that "it is not anti-Semitic to * * * put this country's interest first" (Sept. 10, 1941) is no more a defense of the Jews than to assert generously "*not all* German Jews were profiteers" (Exh. 19, Sec. 2H) or deny that "the Jews are a *major* factor for pushing us" into the war (Exh. 19, Sec. 2I), or to admit that "the Jewish question was not *primarily* responsible for our participation in World War II" (editorial of January 9, 1945, quoted in rejected Exhibit 20, p. 6). The Daily News itself gives in a somewhat different connection an apt description of this technique. By telling the story of a man who was arrested by Puritan coppers and being dragged to the hoosegow, when a voice in the back of the crowd began to scream, "*Don't nail his ears to the post!*" The man whom the Daily News describes as an "old-time propaganda expert" kept repeating his cry until the crowd "snatched him from the cops and nailed his ears to the post" (Jan. 18, 1944, Exh. 19, Sec. 2N).

e) "*A good word now and then.*" The final touch in the fine art of persuasion and propaganda of suspicion is the injection of a few well-spaced appeals for good will and tolerance. These appeals again enhance the respectability of the protagonist and his claim to objectivity and fairness. Of course, they will appear either when they can do the least good to the supposed beneficiary of tolerance or the most good to its advocate. Thus, for instance, the *only* editorial in support of the New York Anti-Discrimination Law published by the Daily News appeared *after* the Ives-Quinn Act was passed by a landslide majority in the New York Assembly (Anti-Bias Legislation editorial of March 2, 1945, Exh. 2, Sec. 51). On the other hand, the measured effort to defend "Tolerance in America" (Jan. 15, 1946, Exh. 2, Sec. 51) appeared as an attempt to appease the violent reaction provoked in the Jewish community (Exh. 19, Sec. 20). The Daily News has no reason to be worried about the effect of these few half-hearted statements. Gresham's law, according to which "Bad currency drives out good", applies to the market of ideas as well, where bad ideas drive out good. Even when they are presented with equal frequency and forcefulness, suggestions of suspicion and bias are much more effective than invitation to fairness and good will.

f) "*Point, counterpoint.*" In fact the Daily News has made a very sparing use of this device. Its *unqualified* tolerance and good will statements are few, feeble and scattered. But a general warning seems in order in this connection. Violent propagandists of hatred have been surprisingly daring in the use of openly contradictory statements. It has been remarked, for instance, that "often, in the very same issue, The Free America [the official organ of the German American Bund] will sing praise of democracy in one article, only to assail democracy in the next" (*Propaganda Analysis*, Jan., 1939). Alfred McClung Lee, in his *The Fine Art of Propaganda*, published in 1939 by The Institute for Propaganda Analysis, remarks:

"It may be wondered how anyone could hope to gain popular support who contradicted himself so openly and frequently. The demagogue knows, however, that few will bother to analyze what he says and through analysis to expose the contradictions" (p. 11).

On the whole it is well to remember that a true picture, to be lively and persuasive, requires many shadows and nuances, and calls for "point and counterpoint" rather than for a gross and crude uniformity and the rigorous exclusion of occasional contradictions. What will count, of course, is the over-all image the picture gives. In the above-quoted study, Alfred McClung Lee shows that Father Coughlin's technique in discussing Nazism "is first to assail it, then gradually to soften its denunciation until it becomes praise" (p. 112). The remark is reminiscent of some Daily News editorials which begin by praising the Jews, then gradually soften their praise until it becomes denunciation.

g) "*By their fruits shall ye know them.*" This comparison with the techniques of the Nazis may sound much more invidious than we intend it. It may be well to clarify that in the preceding remarks and in those which follow we do not contend that the Daily News has followed a *conscious and articulate* master plan of defamation and propaganda. Nor do we believe that it is relevant for our purposes to ascertain how much malice aforethought was required to create the image of the American Jew it has conveyed to its readers. *The really decisive point is that the image derives from a constant pattern according to which the Jewish problem is treated in the Daily News editorials and columns. The pattern may be due to conscious prejudice; to unconscious bias; to a conviction that the end (keep the U. S. A. out of war) justifies the means (create suspicion against the Jews); to a bona fide perverted notion of impartiality to the murderer and the murdered; to a desire to please the buyer by telling him what the seller thinks he wants to hear; to a readiness to print anything that may*

excite curiosity or interest sometimes even in the victim of the attack; or finally and most probably to an inextricable mixture of all those factors. The Commission cannot psychoanalyze the applicants. Nor would it have any business to do so even if it could. All that really matters is the result of the applicants' activity, not their good intentions with which hell is paved. When a newspaper whose policy has constantly resulted in unfairness of treatment and injection of bias and suspicion, intends to carry over such policy to the air, its application must be judged by the pattern of the policy, not by its protestations of friendliness.

4. The colors.

Armed with these pictorial techniques the Daily News has done a job unrivaled in subtle persuasiveness. Others were more blunt and taught that the Washington government was just a Jewish government, or that World War II was just a Jewish war—and nothing more. The themes of the Daily News are different: it speaks of the Jews in Washington and their secret power, of Jews in the second World War and their dragging America into it.

To these two themes additional colors are added: the Jewish loyalty was questioned, Jewish "racial faults" and Communistic connections were emphasized, and a "remedy" for anti-Semitism suggested, the anticipated rejection of which by the Jews would make them at least co-responsible for the "natural" and "inevitable" racial antagonism facing them.

5. The Jews in power.

a) *The Pelley pamphlet.* The first and powerful propaganda stunt of the Daily News on the Jewish participation in American government is to be found in its issue of December 15, 1938 (Exh. 19, Sec. 2A) with which we have started our inquiry. This issue represents such an extraordinary event in the history of journalism that we believe

to be justified in considering that date, if not as a declaration of journalistic war, certainly as the beginning of a new overt policy of the Daily News. It may be a matter of conjecture whether or not the reasons for that new policy lay in the fear that the American Jews would represent a pro-belligerent factor in an America confronted with an inevitable European war, and that the Daily News, still pro-Roosevelt at that time but already isolationist, wanted to discredit that factor by throwing suspicion on their power and motives. Be that as it may, the fact remains that in an unprecedented move the Daily News seized upon an obscure "pamphlet gotten out by a post office-box-publisher", and "intended as an insult and an incitement to political if not mob action against them" [the Jews] (Daily News editorial of December 16, 1938, Exh. 2, Sec. 51) and gave to that pamphlet more space, display and publicity than it has given in years to any domestic or international event. It devoted one-half of its second page, and pages 4 and 38 in their entirety, to a digest of that pamphlet. It further enhanced the prominence of the publication by twelve photographs and one reproduction of the pamphlet's cover. It has thus brought a pamphlet issued, at best, in a few thousand copies, to the attention of every one of the two millions of its readers. Finally, for the sake of those who might not have been satiated with so summary a digest or who may have wished to possess or distribute the original pamphlet, the Daily News furnished—and in a bold type lead—the publisher's address, "The Pelley Publishers, Box 1776, Asheville, N. C."

Of course, the very next day the Daily News assured its readers editorially that the digest was printed "as another illustration of the anti-Semitic wave now building up here" and that, anyway, it "looked to us more like a tribute than an insult" (Dec. 16, 1938, Exh. 2, Sec. 51). On the other hand, the Daily News (which in publishing the pamphlet had stated impartially that the pamphlet purported to be "a plain unbiased simple roster" but that its author was an ex-convict)—took advantage of this editorial

to endorse, for all practical purposes, the facts as given by Pelley. It did not correct even the most glaring inaccuracies of the roster (such as the description of Judge Pecora as a Jew) and did not warn its readers of the simple, but easily forgotten, fact that the publication of a roster of 275 names of Jewish employees in the federal, N. Y. State and city governments and CIO could not by itself be considered a proof of disproportionate influence in a group consisting of hundreds of thousands of employees.

b) *The Ginsburg "type"*. In its first, and clamorous, attack the Daily News "was only reporting" Pelley's charges and tried to justify that reporting by an allegedly pending "New Deal Probe", invented as a peg for the stunt. In more recent times the Daily News went about the same business more directly. On March 12, 1943, it called the attention of its readers to the potential "capital's number one scandal of World War II". This number one scandal consisted in the fact that "young men with pull", among whom were "an astounding number of * * * brilliant graduates of law schools", have been employed by the federal government in war agencies and "treated gently by their draft board." The scandal and the "uproar" was centered on David Ginsburg, a typical young man "with pull" and "a protege of Supreme Court Justice Frankfurter", who, being dropped by the OPA, was about to get an army commission. O'Donnell's column gives the greatest display to the story and reports with gusto a Congressman's roaring remark: "I don't want my boy taking orders from a man of Ginsburg's type" (Exh. 19, Sec. 2J).

Here the play is conducted on two names only: David Ginsburg and Justice Frankfurter. The former, despite all its ethnic significance, was destined to a rapid eclipse from the Daily News columns but his link to Felix Frankfurter has served to keep the latter before the public eye. Justice Frankfurter will be soon presented to the Daily

News readers with other Washington Jews in Washington who, taken together, will be blown up to another "number one" public issue.

c) *Hillman, Frankfurter, Niles*. To lay the ground, a Daily News editorial of September 3, 1944 carries a picture of Sidney Hillman and calls the attention of its readers to this "smart operator", "chief strategist of the Democratic party", with money "to throw around in primary elections", "at least, a fellow traveller", born in Russia and a man who (a highly relevant fact indeed) "had a Rabbinical education" (Exh. 19, Sec. 2K).

A month later, on October 5, 1944, the editors of the Daily News publish Hillman's picture again (Exh. 19, Sec. 2E),—this time to underscore a story by their Washington columnist, O'Donnell, a story in which what started as an ex-convict's complaint, the Jewish influence in Washington, becomes a matter of grave bipartisan concern:

"Now the politically significant reaction to this remark has been the number of letters to the White House, Washington newspaper correspondents, and both Republican and Democratic headquarters here, to the effect:

'Do we have to clear our religion through Sidney!'"

Another month lapses and John O'Donnell discovers in Boston that the complaint has in fact an echo. On November 4, 1944 the Daily News editors again use Hillman's picture to illustrate the following rather outspoken passage:

"Here in Massachusetts you hear openly, and from public men, the observations that are only whispered in other states: That they are 'damned sick and tired of Roosevelt and turning the country over to Frankfurter, Hillman and David Niles'" (Exh. 19, Sec. 2D).

The crescendo from the ex-convict Pelley to charges coming "openly, and from public men" is now complete. It is at this point that the Daily News can, in its editorial

of November 7, 1944, afford the detached and impartial statement:

"There has been discussion whether Jewish influence is disproportionately strong in the Roosevelt Administration" (Exh. 19, Sec. 2C).

O'Donnell has given the "facts". The editorials will hammer them in the reader's mind without ire or passion. The Daily News knows what the most effective means are. It says so, in the same editorial, in another connection:

"We don't pontificate on the long standing charge, we only say could be."

d) *The "secret might"*. The "disproportionate influence" story having been repeated often enough, time seems ripe for a further step-up. On October 3, 1945 the Daily News decided to reveal in the O'Donnell column:

"The secret and astoundingly effective might of this republic's foreign-born political leaders—such as Justice of the Supreme Court Felix Frankfurter of Vienna, White House administrative assistant Dave (Devious Dave) Niles, alias Neyhus, and the Latvian ex-rabbinical student now known as Sidney Hillman" (Exh. 19, Sec. 20).

To O'Donnell's regret, the Secretary of the Treasury, Mr. Morgenthau was born in the United States and could not be included in the lead. But his "bellowings" figured prominently in the column and, to give them due prominence, the Daily News supplied Morgenthau's picture. The column itself told the rather infamous story about General Patton slapping a "battle fatigued" "Jewish" soldier, calling him names and "linking them up with a direct reference to the patient's racial background". Hence the mighty Jewish politicians staged "the successful drive to disgrace and remove General George S. Patton".

The story was made out of whole cloth. The slapped soldier was not a Jew but a Methodist of German extrac-

tion. None of the Jewish personalities named had anything to do with Patton's removal and said so in public statements. The story was indefensible—and a storm was gathering. After sixteen days of meditation O'Donnell finally decided to make a *limited* retraction. He retracted the assertion that the soldier was Jewish. He admitted that he had no evidence of Jewish interventions against General Patton. But he did not withdraw—in any way—the statement made in the lead of his column, the one for the sake of which the whole column was run, the assertion of the "secret and astounding effective" Jewish "might" in Washington.

To underline his failure to retract his charge, but almost to reassert the basic point made by him in his original column, the editors of the Daily News wound up the "retraction" with four photographs, neatly lined up in one row, picturing the four holders of the "secret might"—David K. Niles, Felix Frankfurter, Henry Morgenthau and Sidney Hillman (Exh. 19, Sec. 2R). The readers must have gotten the point.

e) *The four Justices*. O'Donnell said in his retraction that he "regretted" having made the statements. Despite these regrets a few months later he was again at the same game. But in his new story "Truman Asks Four Justices to Quit Court" (Exh. 19, Sec. 2S) the *dramatis personae* have varied somewhat. We find again Justice Frankfurter and "David K. (Devious Dave) Niles". But Hillman having died, and Morgenthau having resigned, two other Jews, Samuel Rosenman and Harold Laski (an essential link "in the Moscow-Laski-White House—Niles transmission belt") have been added. And the story, although dealing with four justices, centers on Niles trying to stay in power and on the federal payroll, and on Rosenman, Laski and Frankfurter backing him up and forcing him on the reluctant President and majority leader.

The story was, of course, entirely false. It was at once denied by the White House. The denial was carried, said

Mr. Flynn, in all the editions of the Daily News. But so was the story. It was not withdrawn when the denial appeared nor has any retraction by O'Donnell or the Daily News ever been published. The big headline continued to assert that Truman did ask Four Justices to quit the court. Against it was pitched the box: the White House denies. The story was obviously too important to be withdrawn: it illustrated the Jewish struggle for power so well! Too bad *this time* one couldn't avoid printing the White House denial or dumping it in the People's Voice. Still, there are a lot of people who believe a story even if it is denied: it is worth running it for them. Particularly when, as in the "balanced presentation" technique of the Daily News it was only one "no" pitched against one "yes". After all, the Daily News readers have been so well conditioned that they can be expected to enjoy a good story about the Jewish power even when one individual case is denied or retracted.

6. The Jews and the war.

a) "*The instinctive fear*". The effect of this picture of Jewish political power in America on the general community is no mystery to anyone. The Daily News, back in 1938, aptly described the Pelley lists as "an incitement to political if not mob action against them [the Jews]" (Exh. 2, Sec. 51, Dec. 16, 1938). But important as this aspect of the Jewish image may be, it should not be viewed in isolation. "Power" acquires its real significance from the purpose for which it is exercised. The already quoted passages have given us some indication about the Rosenmans, the Frankfurters, the Morgenthau, the Niles, the Hillmans and the Laskis sticking together and perpetuating each other in their well-paid jobs (Exh. 19, Sec. 28). But this really refers only to the top politicians themselves. What about the Jewish group as a whole? How does it behave in the United States and what is the reaction of the general community to its behavior? Power in itself

generates antagonism. The "secret might" (Exh. 19, Sec. 20) of a racial group is certain to cause racial tensions. Has *the manner* of its exercise by the Jews enhanced this antagonism and tensions? The Daily News does not leave the answer to speculation:

"Anti-Semitism [or more precisely: 'a growing feeling of anti-Semitism'] in this country is not due so much to the actions of the Jews here as to their natural sympathy for their persecuted racial kinsfolk in Europe. This has created an *instinctive fear* by certain Americans that such sympathy may result in the United States being dragged into the war" (Jan. 16, 1940, Exh. 2, Sec. 51).

On this central theme—the Jews dragging the United States into the war and thus generating anti-Semitism—the Daily News has been offering to its readers a wealth of variations, sometimes appearing in the same editorial. The "instinctive fear" of the war mongering Jews is first presented as originating in an anti-Semitic argument, then described as coming from a general whispering campaign, and finally attributed to "many people", not otherwise identified.

"It seems plain that anti-Semitism is *on the rise in this country chiefly because of war*. Most of our anti-Semites—the Nazis frankly and the others not so frankly—argue that the Jews pushed England and France into declaring war on Germany because they wanted to get their revenge for the way Hitler treats the German Jews. We're told, too, that the Jews are pushing the United States into the war from the same motive" (Sept. 24, 1940 editorial, Exh. 2, Sec. 51).

"Whispering campaign [is] now going on to the effect that the Jews are mainly to blame for our being in the war as we now are, and are moving heaven and earth to push us all the way in. After the war when blame is being dealt around for the inevitable tragedies of all, this legend will probably be dug up in this country, and anti-Semitism may have a flareup" (Mar. 13, 1941 editorial, News Exh. 2, Sec. 51).

"Hitler claims that this war started because Germany needed more living space. Many people feel that it started, largely because of Hitler's savage persecution of the Jews. The cause recorded on paper was Hitler's attack on Poland" (Jan. 13, 1944 editorial, Exh. 19, Sec. 2G).

b) *The "natural sympathy"*. The readers of the Daily News are made to understand rather clearly, despite the word "legend" thrown out on one occasion and a series of half-hearted denials, that the anti-Semites and the whisperers are not altogether wrong and that what they suggest may have quite some foundation. As a matter of fact the Jewish desire of revenge is human and natural and the Daily News will not blame them. Or—another variation of the theme—it will do no good to blame them because their desire is invincible. It is against this background that the Daily News "denials" of the war-mongering role of the Jews are made.

The first of the quoted editorials, "The Big Bomb Plot", contains no reservation whatsoever as to the validity of the "instinctive fear by certain Americans" (Jan. 16, 1940, Exh. 2, Sec. 51). *On the contrary the Daily News is resigned to the inevitability of the situation:*

"We can say that people ought not to sympathize with blood relatives, but they will continue to do so."

Similarly, the last quoted editorial, "The Fifth Partition of Poland", does not deny that Germany's need for Lebensraum, Jewish vengefulness or Hitler's aggression are equally valid short range explanations. All the Daily News maintains is that the long range causes of war lie deeper:

"Whatever the short-range causes of war may have been you can find the long-range underlying cause by doing a little digging in your encyclopedia" (Jan. 13, 1944, Exh. 19, Sec. 2G).

and discovering the European desire or need for a fifth partition of Poland.

Another of the above quoted editorials, "Anti-Semitism in This Country", says that the Daily News does "*not believe* the Jews are to blame as a race or a group" but takes pain to express this cautious statement only after having used stronger language to say that "*no doubt plenty of Jews would like to see us declare all out war on Germany in the theory that Hitler is a beast who ought to be exterminated*" (Sept. 24, 1940, Exh. 2, Sec. 51).

The editorial "Whispering Campaign" says that the theory that "Jews are mainly to blame for our being as deep in the war as we are" is a "legend" and to maintain that the Jews are the prime movers is "against the facts of the case", but adds at the same time that "The Jews hate Hitler and wish him harm because Hitler first hated them and did them harm" (Mar. 13, 1941, Exh. 2, Sec. 51).

The editorial "Conversation Piece" cautiously states, "*We think* Lindbergh is mistaken in saying the Jews are a major factor in pushing us in", but once again contrast the weaker "*we think* he is mistaken" with a strong:

"Of course, the Jews hate Hitler's guts. He began it by hating them and trying to destroy them, not only in Germany but in every country he has conquered. They'd be less than human if they didn't want Hitler rubbed out" (Sept. 18, 1941, Exh. 19, Sec. 2I).

The theme remains the same in the remaining editorials. They will remind the reader that "many people feel it started largely because of the Jews" even if the editorial deals with Russian politics (Jan. 13, 1944, Exh. 19, Sec. 2G) or that "war tragedies and atrocities in Europe have aroused old ancestral racial loyalties here" (Jan. 18, 1944, Exh. 19, Sec. 2N) even if the editorial is devoted to the Drew-Valentine-LaGuardia controversy. In discussing Hitler's "four major mistakes" the Daily News will be sure to explain that the first mistake was committed "when he attacked the Jews" and "angered Jews all over the

world" (Nov. 14, 1944, Exh. 19, Sec. 2H). On the whole, the Daily News concedes that "the Jewish question was not *primarily* responsible for our participation in World War II" but never fails to remind its readers that "*undoubtedly* the Jewish question was a factor in our unofficial entry into World War II long before Pearl Harbor" (Jan. 9, 1945, Rejected Exh. 20, p. 6), that is to say, in the period when war enthusiasm was not a patriotic virtue but a war mongering attempt to draw the United States into a bloody European controversy. This is—in the words of the Daily News—the "legend [which] will probably be dug up in this country, and anti-Semitism may have a flare up" (Mar. 13, 1941, Exh. 2, Sec. 51).

7. Are Jews loyal Americans?

Once having assumed this sympathy and having "benevolently" conceded the naturalness of the Jewish desire to use the American power to avenge the European Jews, it is easy to turn the tables on them, to start reminding true Americans of their duty to oppose pro-alien sympathies and passionately to plead obvious principles with the implication that those, against whom the plea is made, are denying those principles:

"When hyphenation and pro-alien sympathies get beyond the passive point, however, no one whose first loyalty is to this country can countenance them. We cannot divide this country into little blocs sympathizing with and working for the various European factions. It is against our whole purpose of being" (Jan. 16, 1940, Exh. 2, Sec. 51).

The best proof of the Jewish opposition to these patriotic feelings is in the fact that those who voice them are labeled as anti-Semites. The labeling is made, says the Daily News, by war mongers. But the Daily News readers already know that Jews would be less than human if they did not desire America's intervention against Hitler.

And it is certainly not a Christian interventionist whom one can expect to voice the charge that isolationists are anti-Semites. It is easy to guess who are "the more enthusiastic war mongers" of whom the Daily News speaks when it says:

"The other category of those who are called anti-Semites by the more enthusiastic war-mongers are they who believe the United States should not send an army of millions of men—for hundreds of thousands would not be enough—to Europe to avenge upon Hitler the wrongs which he has inflicted upon the Jews in Europe" (Sept. 10, 1941, Exh. 2, Sec. 51).

"In the second category mentioned above, violent efforts are now being made to hang an anti-Semitic label on all who oppose sending millions of young Americans, Jews and Gentiles alike, overseas to settle another of European wars" (ibid.).

The assertion that Jews label those who put American loyalty first as anti-Semites is, at least psychologically, indistinguishable from the assertion that Jews lack loyalty to America. The foundation is thus laid for the final assertion that "it is not anti-Semitic", that "it is pro-American" to put America's interests "ahead of those of any other country":

"And it is not anti-Semitic to feel that Jews and Gentiles alike in this country should put this country's interests first, and should not agitate for American entry into a war which is no business of ours. And which may ruin us all" (ibid.).

This theme—you call us anti-Semites only because we put American interests first, because we are isolationists—apparently dominates the mentality of the Daily News editors. When, after the publication of the Patton story, the Daily News was charged by the Jewish leaders with the publication of an item "as flagrantly anti-Semitic as anything which has ever appeared in a metropolitan newspaper" (Letter published in the Daily News on Oct. 6, 1945,

Exh. 19, Sec. 2P) and was "asked to state its own position on the subject of anti-Semitism", an editorial undertook (Oct. 13, 1946, Exh. 19, Sec. 2Q) to explain that its position on anti-Semitism "is what it has always been". The last six of the ten paragraphs devoted to that explanation do not mention either Jews or anti-Semitism but are simply a solemn assertion that "in short, we're still pro-American, still for America first, as we have always been". Apparently the editors of the Daily News still believed in 1945, as they did in 1940, and as for all we know they do now, that the charge of specific anti-Semitic falsehood can be adequately answered by a recital of Americanism, that what the Jewish organizations which made the charge really reproached the Daily News for was its putting the interests of America first. It may be that the editors of the Daily News in good faith do not realize that by taking that attitude they add insult to injury. It does not really matter. We are concerned here with their policies, as manifested in the newspaper, not with their personal intentions. And the policy of constantly and passionately rebutting an imaginary Jewish identification between American loyalty and anti-Semitism is a considerable contribution to the Jewish stereotype the Daily News has kept before the eyes of its readers: politically powerful, dominated by racial solidarity, ready to put it above the interests of America, ready to consider the good Americans who resist them as anti-Semites.

8. "Racial faults" and Communist connections.

There are few more touches which belong to the picture painted by the Daily News.

To begin with, the Daily News has not yet discovered the verdict of anthropologists concerning the Nazi allegation of the existence of a "Jewish race" and continues, despite their notorious racist connotations and implications, to use the terms "ancestral racial loyalties" (Jan. 18, 1944, Exh. 19, Sec. 2N); "racial kinfolk" (Jan. 16, 1940,

Exh. 2, Sec. 51); "a race apart" which would not assimilate with "other races" (Dec. 16, 1938, Exh. 2, Sec. 51); even "Jewish blood" (Apr. 29, 1945, Exh. 2, Sec. 51) and last, not least, "racial faults" (Dec. 16, 1938, Exh. 2, Sec. 51).

These "racial faults" have obviously something to do with anti-Semitism. In a denial pregnant with admissions, the Daily News said as much when it proclaimed that "anti-Semitism in this country is *not due as much to the actions of the Jews here*" as to their already discussed attitudes towards the war (Jan. 16, 1940, Exh. 2, Sec. 51). The Daily News also concedes that Jews have displayed their "racial faults" in the Old World and then makes a typical half-hearted defense by claiming that these racial faults "are disappearing", but obviously have not yet disappeared in America (Dec. 16, 1938, Exh. 2, Sec. 51). The Daily News also lists these charges. The first charge was that Jews "were slick at a trade, *too slick*". The second was that they were not "truly manly—not athletes". The third that Jews "would not assimilate with *other races*", that they held themselves "as a race apart and rather better than anybody else". The Daily News as usual lists the charges adequately but then forgets to refute them with similar precision. The first two charges are treated by it together and the only answer is a list of six Jewish athletes and the statement, "*Physically*, the Jews average out as well as any other group." The first charge, that of their being "*too slick*", is listed but not refuted. As to the third charge the only answer is "well, in this country they are intermarrying more and more with Gentiles", which—since everyone knows that intermarriage exists only on a limited scale—is no more than an extenuating circumstances plea. The extraordinary display given to stories about people "of Ginsburg's type" dodging the draft (Mar. 12, 1943, Exh. 19, Sec. 2J) and about the alleged abundance of kosher meat with a pictorial contrast of a non-Kosher dealer arriving "to find the hooks empty", with another photo bearing the caption, "There is plenty of beef here—it's been kosher killed" (Oct. 12, 1942, p. 14,

Exh. 19, Sec. 2M)—obviously fits into the stereotype of “racial faults”, possibly into the unanswered “too slick” charges.

The picture would be, of course, incomplete without a hint or two at the Communist connection between Communists and leading Jews. Thus, Laski and Niles are, we are told by the Daily News, part of the Moscow transmission belt (Exh. 19, Sec. 2S) and the Rabbinical student, Hillman, the chief strategist of the Democratic party, is only “technically” correct in denying his connections with the Communist party (Sept. 3, 1944, Exh. 19, Sec. 2K). The prize piece of innuendo is to be found, however, in a Daily News editorial which describes an attack on Bolshevism, which in no way mentions the Jews, as sounding anti-Semitic:

“Major Gen. George V. M. Moseley (retired), for example, says, in what at least sounds like an anti-Semitic utterance: ‘Who remembers our making any protest worth while when a party of less than 2% of the Russian people brought 160,000,000 Russians under the control of the most tyrannical government known in history?’”

9. The irrepressible conflict.

This being the image of the American Jew, what can America do about them? The Daily News itself takes in general a fatalistic, not to say defeatist, view of the whole problem of interracial co-existence and harmony, a view, incidentally, which can explain, if not justify, its lukewarm attitude towards anti-discrimination legislation, or its comparative neglect of news on good will manifestations. In speaking of the Detroit race riots, the Daily News observed with remarkable resignation:

“We can—and do—deplore the fact that Americans of different racial origins have such conflicts but they do from time to time. There may be some ultimate means of bringing about harmony of living—although it is not visible right now—but the first need is order,

even if we have to use all the force at the command of authorities” (Editorial “Order Is Heaven’s First Law”, June 23, 1943, Exh. 2, Sec. 51).

In the light of this surrender to the innate human proclivity to interracial hostility, *the only known answer* to which is “force”, it is not surprising to read in the Daily News that prejudices not only exist but that they are “natural”:

“Racial and religious prejudices do exist and it is fatuous to pretend they don’t. It’s natural for most Jews to prefer Jews to Catholics and Protestants; for most Catholics to feel that they have an edge on Protestants and Jews; for most Protestants to harbor ideas of superiority over Jews and Catholics” (Jan. 18, 1944, Exh. 19, Sec. 2N).

The most you can hope for under these conditions is not better interracial understanding or genuine lack of bias but just some ability

“to keep those natural feelings in the background—just as when you go to a party you don’t walk up to some other guest and say, ‘I never did like Catholics, anyway, and I don’t like you’” (ibid.).

Even Hitler’s mass slaughter of Jews is nothing really exceptional, “All in all, this is the latest chapter in the story of Jewish persecution, which goes back almost to the dawn of history”, is the conclusion the Daily News offers in its editorial “The Jews in Europe” (Exh. 2, Sec. 51, Aug. 31, 1943). If the situation is to be remedied at all, the answer is not a better relationship between Jews and non-Jews, but at least in America is to have the Jews give up altogether, to give up their centuries-old struggle for real equality and the right to be different, to give up their collective personality and their ethnic individuality. Just as the only Jews of whom O’Donnell has ever approved are dead Jews (he refers to the “great and learned

Brandeis and Cardozo"; Exh. 19, Sec. 2S) so, for the Daily News editors, the only really good Jew is the disappearing Jew.

10. The unassimilated refugee.

To achieve this aim two means are necessary. First: prevent further Jewish immigration into this country. Second: induce the Jew to intermarry. As to the first point, the Daily News, whenever it discusses the Jewish question, is prompt to remind its readers that if immigration quotas were repealed

"we would be flooded with more immigrants of all nationalities from war ruined eastern Europe than we could accommodate" (Editorial, Aug. 31, 1943, Exh. 2, Sec. 51).

Similarly, in discussing the Palestine question, the Daily News clearly states the main reason for its alleged pro-Zionist policy, a "reason" which has provoked so many rebukes from the British ("You want them in Palestine because you don't want them in New York"). Yet it concedes that British opposition to Zionism may have "deep and weighty reasons", and adds:

"Certain it is, though, that it would be better for the United States to have Palestine reopened to Jews than to have them coming over here after this war as unassimilated refugees" (Editorial, Dec. 19, 1944, Exh. 19, Sec. 2L).

There are already "an estimated 5,000,000 persons of all or part Jewish blood in the United States" and social discrimination against them is on its way out:

"it is hard to see, however, how the United States could offer sanctuary to any considerable percentage of the 5,000,000 or so Jews outside this country as long as other places of refuge are available" (April 20, 1945, Exh. 2, Sec. 51).

The number of prospective Jewish immigrants to this country really in question is of course only a small fraction of the 5,000,000 scare-crow figure, seventy percent of which refers to Jews in Soviet Russia, the British Commonwealth including Palestine, and South America. But even if the figure were reduced to two percent of that total, that is to say to one hundred thousand persons, the Daily News would hold the same opinion:

"As for admitting 100,000 Jews to this country, or 100,000 immigrants of any description [an obvious red herring because the present immigration laws permit the annual entry of 150,000] we do not think that should be done until our returned fighting men are demobilized and in jobs" (Editorial, Oct. 7, 1945, Exh. 2, Sec. 51).

11. The shotgun intermarriage.

Having thus made sure that the door is shut to the "unassimilated refugees" (Dec. 19, 1944, Exh. 19, Sec. 2L)—and we wonder if the term is not a euphemism for "unassimilable refugees", since they would belong to that race "which would not assimilate with other races" (Dec. 16, 1938, Exh. 2, Sec. 51)—what shall we do with "the 5,000,000 persons of all or part Jewish blood in the United States?" Shall we just treat them as any other people, forgetting their Jewish race, creed, "blood" or previous condition of serfdom? Not quite. The Daily News has another solution. It may not be popular with the Jews, they may reject it—but then they will have to blame themselves for the consequences. The editorial "What is anti-Semitism" offers the following final conclusion:

"We know a lot of Jews won't agree with this, especially, perhaps, the older ones. But we think the best way to settle the Jewish problem in America, we're not talking about Europe's problems, is along the lines forecast by Israel Zangwill's 'Melting Pot' and 'Abie's Irish Rose.' When a young Jewish boy or girl sitting in high school falls in love with a Gentile

classmate, and the love is returned, they should get married no matter what the old folk think. This would do more to eliminate the hyphen in the America of the future than anything else can do" (Sept. 10, 1941, Exh. 2, Sec. 51).

The same thought furnishes the finale to the editorial "Anti-Semitism Here" where a "Well, in this country they are intermarrying more and more with Gentiles" (Dec. 16, 1938, Exh. 2, Sec. 51) is presented as the only answer to the charge of the Jews holding themselves "a race apart and rather better than anybody else." It is also the only consolation to undisputable Jewish war-mongering solidarity:

"We can say that people ought not to sympathize with their blood relatives abroad but they will continue to do so. Yet, on the whole, the melting pot works. The grandchildren of immigrants are practically 100 per cent Americans [is it because they no longer sympathize with their blood relatives abroad?]. Our high schools where boys and girls of different races sit side by side have brought about many intermarriages" (January 16, 1940, Exh. 2, Sec. 51).

The Jew is thus presented with an ultimatum—to disappear as a Jew or to suffer persecution. The fact that intermarriage can be no solution for discrimination and persecution, because as long as any form of social discrimination exists only a limited number of intermarriages is possible, the fact that this solution has been often attempted elsewhere but never did prevent the detection of "Jewish blood" in the third or fourth generation; the fact that most Jews would refuse a collective shotgun marriage for reasons of dignity, if for no other reason, and because they know that escapist solutions are really no solutions at all—all these facts do not impress the Daily News. It knows very well that "a lot of Jews won't agree" with the Daily News recipe. So what? It will be one more reason to blame the Jews for anti-Semitism.

12. The Daily News' neutrality.

Not that the Daily News has really taken sides for the anti-Semites against the Jews. The Daily News is impartial. And the overall picture of the Jew in America being what the Daily News made it appear, the readers understand that neutrality is really the best the Jews are entitled to. They can't blame the Daily News for not taking sides in their conflict with the anti-Semites. To begin with, the Daily News reminds us, the Bill of Rights means only:

"that our Government shall not *officially* discriminate against any religion. It does *not* mean that Americans are forbidden to dislike other Americans on religious or any other grounds. Plenty of people just now are exercising *their right to dislike the Jews*" (Dec. 16, 1938, Exh. 2, Sec. 51).

Nor is that "right" really limited to mere disliking of Jews and saying so. There may be—the Daily News supposes—"legal methods" of harassing and restricting Jews. In describing the Ku Klux Klan and Christian Front ideals, the Daily News informs its readers with detachment:

"Such people believe that the Jews now in the United States should be harassed and restricted by illegal or, *if possible, legal methods*" (Sept. 10, 1941, Exh. 2, Sec. 51).

There apparently exists a danger, against which the Daily News' main efforts in the inter-racial field seemed to be directed, that legitimate anti-Semitism be confused with its illegitimate variety, that legal methods of harassing be outlawed along with the illegal ones. This danger ranges from the modest case of Patrolman Drew whose "alleged offense consisted in not liking Jews" (Jan. 18, 1944, Exh. 19, Sec. 2N) to the already discussed warmongers' attempts to label those who put America first as anti-Semites.

In this situation the Daily News has only one solution left: to be impartial, to be objective and to be balanced.

This impartiality was made clear in the very title of one of its early editorials. Speaking of "Europe's Hatreds," in the plural it obviously assumed that Europe's tragedy was not due to the Nazi hatred towards liberals, Catholics or Jews but the mutual *hatreds* of Nazis and anti-Nazis:

"Europe's hatreds we're sorry to observe had a workout in New York City night before last, when the German-American Bund threw a rally at Madison Square Garden and numerous anti-Nazis gathered around for a counterdemonstration" (Feb. 22, 1939, Exh. 2, Sec. 51).

Seven years, one World War, and Hitler's four "mistakes" later, the Daily News is still adamant in its impartiality and proudly proclaims "The News is neither anti-Semitic nor pro-Semitic" (October 13, 1945, Exh. 19, Sec. 2Q). It still has not acquired the understanding that to be impartial in a struggle between a persecutor and his victim, to take no sides between bias and fairness, to deal evenly with defamatory lies and truthful denials—is the surest means of perverting social values, spreading libel and assuring the triumph of bias and crime.

13. The Daily News regrets.

This "neutrality" of the Daily News is not an accident. It is a deliberate, well-considered policy, steadfastly and obstinately adhered to. The accusation of anti-Semitism is no novelty to the Daily News. As early as in 1941 it acknowledged in an editorial that it has been "sometimes called anti-Semitic by its ill wishers" (Sept. 10, 1941, Exh. 2, Sec. 51). In this proceeding, Mr. Flynn stated quite candidly:

"I would be subject to an accusation of stupidity, I believe, if I did not recognize the fact that there has appeared in the News, not once but several times, articles, news stories, pictures, editorials, which have been construed by certain segments of the population of New York, or those who claim to represent them, that they were anti-Semitic, that they created feeling.

Now I state here and now, that if ever that occurred, the News didn't look upon that as something that should be continued; they regretted it, and they regret it today, and they say that never has there appeared and never will there appear in the News intentionally a news story, an editorial or a column which will be planned, designed to be anti-Semitic. And if it is so interpreted, or if it creates feeling, the only thing we have regarding it is regret" (1430).

In this passage Mr. Flynn refers to "certain segments of the population of New York or those who claim to represent them." It does not, we assume—nor will the Commission—doubt that

"Joseph M. Proskauer, President, American Jewish Committee; Rabbi Stephen S. Wise, President, American Jewish Congress; Henry Monsky, President, B'nai B'rith; Adolph Held, Chairman Jewish Labor Committee; Archie Greenberg, National Commander, Jewish War Veterans of the U. S.; Frank L. Weil, President, National Jewish Welfare Board"

who signed the letter accusing the Daily News of publishing a column "as flagrantly anti-Semitic as anything which has ever appeared in a metropolitan newspaper" (Exh. 19, Sec. 2P) do in fact represent the Jewish community. They did not ask the Daily News to be "pro-Semitic". They asked it to be responsible and truthful. They asked it to do what the Daily News ought to have done, on its own, before publishing the vicious attack, that is to say, to check the facts of an explosive stunt. That the Daily News had not done. They asked the Daily News to publish the official denials of a Presidential Assistant and of the Secretary of the Treasury who branded the Patton story as "wholly untrue." That the Daily News did not do. They asked the Daily News to print their letter "in the same prominent position in your newspaper which you featured Mr. O'Donnell's column". That the Daily News did not do. They asked

the Daily News to repudiate O'Donnell's falsehoods. That the Daily News refused to do and printed an editorial in which, without even hinting at the fact that the accuracy of the story was violently challenged, lectured the Jews on the freedom of the press and on the obligation to put America First (Exh. 19, Sec. 2Q).

If the Daily News did say: "Yes, we were not fair in our newspaper—we had the right to be unfair. But we know what a radio is—and we shall be different on the air"—the Daily News would have a case. But when the Daily News general manager says under oath that its editorial policy—"and editorials are rather carefully planned, generally" (Mr. Flynn at pp. 1428-29)—is fair and *not* biased, and that its news is accurate, when the Daily News exhibits declare that *the same policy* will "carry over" to the FM station, when its broadcast editor expects to achieve on the air "the same standards of truthfulness and accuracy and freedom from bias"; then it becomes the inescapable duty of every truth-loving organization to oppose the grant of a quasi-monopolistic public trust to the Daily News. It becomes then, we submit, the duty of the Federal Communications Commission to prevent the Daily News from using one of the few available FM channels to "carry over" its stereotypes and techniques, its standards of accuracy and policies of fairness to the air of the City of New York.

III. The AJC Content Analysis

I. Principles.

The second part of the evidence introduced by AJC consists of a comparative quantitative content analysis, covering a sample period of six different months chosen at random. This study consists of a comparison between the number and length of favorable and unfavorable items

concerning Jews and Negroes which have appeared during the period under survey in the general news columns of the Daily News, on the one hand, and the number and length of similar items which have appeared during the same period in the general news columns of the other four New York City morning newspapers of general circulation. The study as a whole is based on a few rather simple assumptions which must, however, be spelled out clearly before the methods and the results of our study can be set forth.

Our first and basic assumption is that, in a given social context, news in general may be described as favorable, unfavorable or neutral with respect to the period or persons about whom the news story is written. Thus we assume that a news item appearing in 1945 in an American newspaper about the heroic war behaviour of an American soldier may be logically classified as "favorable" to that individual. Conversely, we assume a story published in a similar paper about the conviction of an individual for rape can be with equal validity classified as "unfavorable" to the individual involved. Finally, we recognize that some news-stories may be neither favorable nor unfavorable and others may contain both elements. These are stories we would consider respectively neutral or balanced.

To avoid a misunderstanding as to the meaning of this classification it is necessary to make at this point a few additional remarks.

First of all, the classification—and our study—does not imply favor or disfavor, accuracy or inaccuracy, fairness or bias on the part of the writer or publisher. He may be totally indifferent or even hostile to the individual about whom the story is written. If the story is about a writer winning a literary prize, it will be classified as favorable, whether, for instance, the exceptional value of the prose, the amount awarded, the distinction of the previous winners had been studiously pointed out or carefully omitted. Nor have we asked ourselves whether or not the details given, or even the story as a whole, is accurate, inaccurate or

wholly untrue. We have not attempted any comparison between the story and "what really happened", any measurement of the intensity of its favorable quality or any inference as to the intentions or policies of the writer and publisher. We took every story on its face value, determined only its direction (favorable or not), not its degree or intensity, and we reserve all inferences as to intentions or policies to the over-all selection of news rather than to the treatment of individual items.

Secondly, the classification—or our study—that does not imply that *the event* described in a news-story is in itself desired by the individual or individuals involved. It is a classification of favorable stories not of favorable events. A story about persecution or discrimination against innocent persons is not a story about *events favorable* to them—but it is a *favorable story* about them. Conversely, the events described in such story may be quite favorable to the persecutors to whom they may have meant money, success and satisfaction—still the story of their criminal exploits would be a story unfavorable to them.

Thirdly—and the previous point has already suggested it—our characterizations of favorable, unfavorable or neutral are not intended as absolute value judgments or the expression of the personal opinions of analysts. These are based on value judgments conditioned by the social context of our society. In a society in which sheer strength is recognized as possessing an even higher value than our society places on it, the fact of being persecuted would be considered not only unfortunate but shameful as well—and the story about persecution would have to be classed as unfavorable. In a society in which physical courage and patriotism are considered as doubtful virtues, a heroic death on the battlefield could be considered as unfavorable or neutral news. The conviction by a tribunal of oppressors could be classified as favorable news in a country whose public opinion is ripe for rebellion. The validity of the classification will not be impaired, of course, by the lack

of unanimity in a society; values on which it is based are those prevailing in, not unanimously accepted by, our society. This is why, despite the presence in our midst of crypto-Nazis and of people who despise all "politicians", of conscientious objectors and of gangster-enthusiasts—we have felt justified in classifying stories about unjustified persecution or distinguished public service as favorable to the persons being persecuted, or having served, and stories about an individual refusing to serve in the armed forces or holding up a bank as unfavorable to those individuals.

Our second assumption is that, under given conditions, the publication of certain stories about individuals or organizations may be favorable or unfavorable not only to them but also to the ethnic group to which they belong. Sometimes a story is directly about an ethnic group: the story about the Detroit race riot or about relief to the Jews of Europe. Sometimes it deals only with a specific individual or organization. Still—when these individuals or groups are identified as belonging to the given ethnical group—the story about them may be favorable or unfavorable to the group as a whole. This depends on the degree to which a given society is ready to "transfer" its emotional reactions to a story from the individual to the group. This readiness may vary not only according to the type of stories but also to their frequency and to the ratio of their distribution between the favorable and unfavorable class. From this viewpoint, it is always important to ascertain how many stories of a given kind are being printed. Certain "areas of transfer" are fairly well known, however: individual achievements of Negroes, for instance, in the literary field, or the election or appointment of a Negro to a judicial position are usually considered as "a credit to his race", a judgment which would not necessarily apply to an appointment of a Jew to a minor judicial post in New York City. Similarly, the public understands news on crimes by Negroes as news on *Negro crimes* and there is no doubt that, as a Daily News witness has put it, news of

crimes by Chinese or Negroes cause a loss of face to the Chinese or Negro community (3297).

Our third assumption—which goes to the relevancy of our study in this proceeding—is that the difference in the ratio of favorable to unfavorable stories between various newspapers is significant and can be used to ascertain the objective policies of a newspaper—as distinguished from the subjective attitudes of its editors—towards the group with respect to which the classification is made. The raw material, so to say, from which newspapers operating in the same field draw their stories is roughly the same—the newsworthy part of the life of the City and of that segment of the world in which the City is interested. Of course, the judgment on what is newsworthy, on what is “fit to print”, will vary from paper to paper—if it did not there would be but one newspaper. But it is precisely this variation in judgment that can be detected from the variation in the content of the published news. In other words, we assumed, if it were found that one newspaper prints 2 favorable stories about Negroes and Jews for every 5 unfavorable ones while the ratio in another paper in the same City is exactly the reverse, that finding would not be wholly unrelated to the newspaper's policies towards the treatment of the Negro and Jewish news. In fact these figures would be in themselves the embodiment of that policy.

Here again a reservation is in order. Our study did not intend to prove that one of the two policies, if found to exist, would be good and the other bad, and not even that one is better or the other worse. All that our analysis attempts to show is the difference, if any, between the Daily News pattern of selection of news about Jews and that of other major papers in the same field. We assume that if it were shown that the News has given twice as much space to Negro crime and half as little space to Negro achievements as either the Times or the Herald-Tribune, the conclusion as to the social desirability of such a policy in a radio license should be left to the Commission.

2. Methods.

The main purpose of our study was to ascertain ratios between favorable and unfavorable items in various newspapers. But for purposes of convenience our analysts have adopted a series of categories so that relevant conclusions would become apparent from the distribution of the items among these categories. The total number of categories has been finally reduced to eight, the first five of which have been classified as favorable, the last three as unfavorable.

The five categories of favorable news are: (1) achievements of individuals; (2) political or community activities; (3) persecution and discrimination; (4) inter-group goodwill activities; and (5) miscellaneous favorable. The three categories of unfavorable news are (6) crimes; (7) inter-group antagonism and clashes; and (8) miscellaneous unfavorable.⁴

While there seems to be no need to explain either the meaning of categories such as individual achievements (*Category 1*) or crimes (*Category 6*), nor their having been classified as respectively favorable and unfavorable, it may be necessary to offer a brief comment on the others.

Category 2, political and community activity, consists of news dealing with educational, cultural, welfare, relief and civic activities of various Negro and Jewish organizations. It has been classified as favorable because our society at large considers these activities as creditable. The devotion to these activities and the consequent importance and strength of the organizations pursuing them is viewed as a sign of the political and social maturity and respectability of the group itself.

Category 4, intergroup good-will activities, refers to manifestations of inter-racial and inter-faith cooperation and solidarity. The news about these activities is considered favorable because they indicate the absence of prejudice and bias in considerable, and often very respectable elements of our society.

⁴ These categories are listed on Table 40 of Exhibit 19, Section 12, and the code numbers appearing on all the tables of that exhibit correspond to the listed categories.

Category 3, news about persecution and discrimination, is also considered favorable to the victims of persecution and discrimination, provided that the stories indicate that what is involved is a persecutor-persecutee relationship or an unwarranted discrimination, thus conveying the impression that the minority group is the victim of an injustice. Otherwise, the simple statement that black and white, Jew and Gentile do not get along as soldiers, neighbors or baseball onlookers is news about racial antagonism and clashes and thus belongs to *category 7*. This category is classified as unfavorable because by bringing out a basic, almost fatal, antagonism between groups, it impairs the minorities' chance of integration and their claim to non-segregated patterns and fair treatment.

3. Findings.

On the basis of these elementary assumptions and simple classifications Miss Leila Sussman, first alone and subsequently with the help of assistants, examined the Daily News and four other New York City morning newspapers, the New York Times, the Herald-Tribune, the Mirror and PM, and tabulated the number of favorable and unfavorable stories. The results of the first reading are embodied in our Exhibit 19, Section 5; those of the second reading in our Exhibit 19, Section 12. The overall results of the two readings are substantially identical, despite the fact that the second reading raised the total number of stories on Jews and Negroes found and considered in the analysis from 105 for the News and 741 for the other four papers (Table 3, Exh. 19, Sec. 5), that is to say a total of 846, to 146 for the News and 1163 for the other four papers (Exh. 19, Sec. 12), that is to say a total of 1309. The corroborating effect of the second study shows that whatever errors or omissions may have been committed were unbiased, random errors which do not affect in any way the results of the study, directed as it is at the ascertainment of the different *proportions* between favorable and unfavor-

able stories in the various newspapers, *not* of the number or size of stories printed.

To give at once our fundamental finding, that of the ratio of favorable to unfavorable stories we shall turn first to Table 25 of Exhibit 19, Section 12, which gives an overall summary on this basic point. This table (based on the absolute figures of Table 3) reads:

	Favorable	Unfavorable	Total
Daily News	65	35	100
Average of the other papers	89	11	100

In other words, the *percentage* of unfavorable stories concerning Jews and Negroes in the Daily News is more than three times as great as in the average of other papers (35 to 11).

The picture is even more striking if Negro stories alone are considered. The findings with respect to them are given on Table 22 of Exhibit 19, Section 12:

	Favorable	Unfavorable	Total
Daily News	45	55	100
Average of the other papers	89	11	100

In other words the *percentage* of unfavorable Negro stories in the Daily News is five times as great as in the average of the other papers (55 to 11), while the percentage of favorable Negro stories in the News is only one-half of the percentage in the other papers (45 to 89).

If we take the absolute figures of Table 2, on which the previous Table 22 is based, we see that the News has printed only 24 favorable Negro stories as against the average of 81 printed by the others, while it found space to print 29 unfavorable Negro stories to an average of 10 in the others.

The same story, told in inches, is even more significant. The ratios between the *space* devoted to favorable and un-

favorable stories on Negroes and Jews in the various newspapers is based on the absolute figures of Table 6 and shown in Table 26:

	<i>Favorable</i>	<i>Unfavorable</i>
Daily News	47	53
Average of the other papers	88	12

In other words the percentage of its space devoted by the Daily News to unfavorable stories is $4\frac{1}{2}$ times as large as that of the other papers (53 to 12) while the percentage of space devoted to favorable papers is a little more than one-half (47 to 88) of theirs.

Here again, the percentages dealing with the ratio of inches devoted to Negro stories is even more striking. They are given on Table 23:

	<i>Favorable</i>	<i>Unfavorable</i>
Daily News	29	71
Average of the other papers	89	11

In other words, as far as Negroes are concerned, the percentage of Daily News space devoted to unfavorable stories is $6\frac{1}{2}$ times as large as that of other papers (71 to 11) while the percentage of its space devoted to favorable ones is only $\frac{1}{3}$ of theirs (29 to 81).

The above Table 23 is based on Table 5 which gives the absolute figures in column inches. The latter shows that the News had only 170 column inches for favorable items on Negroes while the others used an average of 1049. On the other hand, it found 415 inches for unfavorable stories while the others limited themselves to an average of 124.

These findings represent the proportion between favorable and unfavorable stories *in the same newspaper* and therefore the relative sizes of the various newspapers have no bearing, whatsoever on this part of the study. We have, however, also attempted to compare the Daily News to the other papers after having, of course, made due allowance for difference in their size. To achieve that result we have proceeded as follows:

Instead of comparing the number of stories (or the number of column inches) in the Daily News with the number of stories (or the number of column inches) in another newspaper of a different size, we have first established the ratio of the number of Negro and/or Jewish stories and inches in each newspaper to the total news coverage in stories and inches of the *same* paper (Tables 10 through 15). Then we proceeded to compare, among themselves, these ratios, first established separately for each paper. This comparison among ratios (rather than absolute figures) automatically makes all allowances for difference in the size of the newspaper, size of the columns, size of the characters used, spacing, etc., because these elements remain identical in the same paper in both minority and in the general coverage and therefore do not prevent the establishment of a precise ratio between these special stories and the general coverage. In its turn the comparison between the newspapers is based on these ratios which are independent of (or rather have taken into account), the differences in the size of the newspapers, etc. The result of this comparison is given in Tables 28 and 29 as to the Jewish stories and inches, 31 and 32 as to the Negro stories and inches, 34 and 35 as to the over-all picture. This last table shows that if all New York City morning newspapers were reduced to an identical size, the ratio of space devoted to *favorable* stories on Jews and Negroes would be 29 in the Daily News to 71 in the average of the others, while the ratio of space devoted to unfavorable stories on the same topic would be of 74 in the Daily News to 26 in the others.

The table in question gives the following graphic picture:

	<i>Favorable</i>	<i>Unfavorable</i>
Daily News	29	74
Other papers	71	26
Total	100	100

The table presents an almost perfect *inversion* of the favorable and unfavorable ratios in the Daily News as compared to the field. In other words, the Daily News plays in the area of *unfavorable* stories the same, or even greater role (74%) than the average of the other newspapers play (71%) in the area of *favorable* stories. At the same time, of course, the Daily News can play in the area of *favorable* news only a minor role (29%) comparable to the role (26%) played by the average of the other newspapers in the area of *unfavorable* stories. This inversion of the roles played in the two areas by the Daily News, symbolizes—we submit—the perversion of the social values which underlies the news selection policies of the Daily News.

IV. The Challenge to the Content Analysis

The Daily News has challenged the content analysis submitted by the AJC on several distinctive grounds which may be summarized as follows:

A) A content-analysis purporting to distinguish between "favorable and unfavorable" news items is a logical and scientific impossibility.

B) The rules followed in the AJC analysis are unfair to the Daily News.

C) The AJC conclusions in the content analysis are incorrect and its results erroneous.

A. The Scientific Demurrer

1. *All news is objective.* Mr. Warren, the expert witness for the Daily News was asked during the hearing to state the reason for the Daily News' failure to present a complete content analysis of its own and thus to show not the occasional random omissions made by the AJC analysts, but the error, if any, in their over-all results and conclusions. In answer to this question he stated that "the

main reason why we didn't attempt to duplicate the AJC survey" was the Daily News' belief that no survey of the type made by Miss Sussman "can be made under the rules she drew up or under the rules that anybody else would draw up with a view of showing the bias in a newspaper based upon news stories" (3242). He added: "To try to measure news in a form to show bias one way or another is almost beyond human capacity" (3242) • • • "To call it science seems a mockery to me" (3243).

The first reason advanced by the Daily News in support of this scientific demurrer against *any* content analysis of news was:

"The very essence of a news story is that it is objective and that it is neutral. That is the very essence of news. And to try to measure it in a form to show bias one way or another is almost beyond human possibility" (Warren, 3242).

This contention is indeed refreshing. It takes us back to a happy era in which well-bred people, this side of news innocence, used to maintain that a thing must be true because "it says so in print, right here, in my paper." But after decades of wars of news-propaganda, after decades of research on conscious and unconscious news-slanting,⁵ it is surprising to hear a newspaperman, testifying under oath, make similar statements. The argument will not be taken seriously by the Commission; it will be recognized for what it is, for a last minute attempt to wreck the very principle of content analysis so dangerous to those who do not want to be analyzed.

2. *The proof of a policy.* It should not be overlooked, furthermore, that the argument is wholly irrelevant to the type of survey the AJC has undertaken. We have not attempted to show news *misinterpretation* by the Daily News. We have assumed, on the contrary, that all the news items covered by the survey were truthful and accurate. But

⁵ Mr. Flynn testified that "four or five reporters hearing the same thing and telling the story the way they see it" will write different reports (3334).

we have shown, for example, that the Daily News has in fact reported *more* Negro crimes and *less* Negro achievements than the other papers. This point was made clear to Mr. Warren on cross-examination, and he was asked whether or not an analysis could show the existence of a specific slant by showing a deviation in the *selection* of news. He admitted that this was possible, but qualified this answer by an important and not unfamiliar *if*: "if you can prove it" said Mr. Warren:

"If you can prove that [a newspaper] consistently omits as a policy *and prove it by its employees, or by some kind of written order* that that is its policy, I think you can prove bias" (3273, 3274).

It is easy to recognize in this argument the last ditch defense of defendants in conspiracy, restraint of trade, or discrimination cases. They have always contended that the evidence against them is not complete unless an express agreement, or "some kind of *written order*" or an *explicit* statement of policy is shown to exist. Unfortunately for them, the law is to the contrary. *The existence of a consistent pattern of external behavior* has been held sufficient to prove the existence of a conspiracy, of a combination to restrain trade, or of a policy of discrimination. The content analysis submitted by the AJC is precisely the showing of a consistent pattern of external behavior. Once that behavior is proved there is no need to produce "a written order," a confession by employees, or an express statement of editorial policy.

3. *Scientific rigor and common sense.* The second reason on which the Daily News "scientific demurrer" against content analysis rests is the alleged impossibility of determining what is good and what is bad. Once again, to support the Daily News position, Mr. Warren takes a knowing attitude:

"Again, I challenge the whole designation 'favorable' and 'unfavorable.' *I don't know anything that is favorable or unfavorable. I say it is news*" (3280).

"I assume calculations like that [percentage of newspaper's coverage devoted to favorable stories] could be made but I deny the validity to find out in the first place which are favorable and which are unfavorable and therefore I cannot concede that any such content analysis is scientific" (3273).

The Commission—we are sure—will not share the lofty scientific agnosticism of Mr. Warren. After all, courts, commissions, and even social scientists are under no compulsion to ignore what everyone knows. No man in his right senses confronted, for instance, with two stories, one about a group of Negro soldiers raping a white nurse and the other about a Negro winner of a literary prize, will succumb to insufferable, hamletic doubts in trying to decide which of the two is favorable, and which is unfavorable, to Negroes. The truth of the matter is that Mr. Warren himself is not always kept under the spell of "scientific" rigor and has frequent intervals of common sense lucidity. The record is replete with statements of his in which he seems to know perfectly well what is and what is not favorable. We shall quote only a few instances:

a) "[Standard size papers] have open areas to devote to stories *favorable* not only to minority groups but to community activity of various groups of all kinds" (3249).

b) "We found practically every entertainment page of the Daily News in every issue had *favorable* references to Jews and/or Negroes" (3228).

c) "Her elimination of groups and entertainment and the columns worked very heavily to the disadvantage of the News because of *the many favorable references* to the two minorities in those departments of the News" (3235).

d) "My files of *favorable* articles grew very swiftly" (3241).

e) "These columns, which are heavily read for their news content were *replete with favorable references* to these minority groups" (3236).

f) "I will say that nobody ever heard of an *unfavorable* obituary" (3237).

The prize statement, however, is that made by Mr. Flynn himself who in presenting a volume of items *favorable* to Jews (Exh. 2, Sec. 52) remarked with commendable candor:

"*Naturally*, we believed that it would be favorable, but it was before we got into this lengthy discussion about what is favorable and what was not, it might be a *clear example* of our thinking before we got involved" (3338).

The Daily News thinking and the AJC thinking on what is favorable or unfavorable was, to begin with, pretty clear and susceptible of "a clear example". Certain items fell "naturally" in one or another category. It is only after the Daily News "got involved" in "scientific objections" that its protagonists lost their natural capacity for these simple distinctions and were led to state solemnly "I don't know of anything that is favorable or unfavorable" (3260).

4. *The "healthy effect" of race tags.* The Daily News has made only one attempt to go beyond this general know-nothing position with respect to the concrete categories on which the AJC study is based. It has made only one specific challenge of our characterization of certain classes of news as favorable or unfavorable and this challenge was directed, surprisingly enough, to the characterization of crimes as unfavorable news.

The Daily News position on this point was fully stated for the first time by Mr. Warren on redirect examination. He had *denied* on cross-examination that a newspaper which "devoted itself to merely crime and sex stories and never printed any news at all about achievements, good will, cooperative efforts, discrimination and so on" would result "in a warped view of that community" (3288). This unexpected denial seemed so patently absurd to counsel for the AJC that he did not pursue that line of inquiry any further. But counsel for the Daily News deemed it

essential that its position on this issue be stated fully and asked Mr. Warren, on redirect examination, to elaborate further on this important point. So urged, Mr. Warren made a statement which sheds so much light on the main problem before us—the Daily News attitude towards the minority problem—that it is worth quoting in full:

"The assumption on the crime coding is that it is unfavorable to the minority group to identify the culprit as belonging to the minority group. Every time in a newspaper that a culprit in a crime story or in any story that cast him as a bad person, or in a bad light, is mentioned as a Chinese—say, it is a Chinese boy who gets into trouble—the effect on the community is this:

That costs the Chinese Community such a loss of face that the parents get together, the teachers get together and they take this lad into tow—and they investigate his case and they see if he has had proper environment. They try to remedy the situation. The result is that if the publication and the identification of Chinese when they get into trouble, has a very healthy effect on the whole Chinese community and has a very healthy effect on the community in general because it helps to get rid of the sources of crime.

The Presiding Officer: Well, would you think that would carry over in identification of a Negro as a criminal?

The Witness: Yes, to a large extent. I think that the leaders of the leading organizations of the Negro Community are made aware of the crime in their community. They are much more likely to take steps to remedy that situation than if they were left in darkness and blindness in that situation" (3297, 3298).

This manifesto of social and interracial philosophy speaks for itself and only reluctantly do we take the risk of spoiling it by our comments. It is indeed hardly necessary to point out that the Daily News position contains, to begin with, nothing less than a full admission of the fact that the identification of culprits or bad persons "as belonging to a minority group" causes a "loss of face" to that group. This admission would seem sufficient in itself

for the classification of the item as unfavorable. If despite the admission of "loss of face" the Daily News denies the propriety of the classification it is because the theory on which it really proceeds is that such "loss of face" is fully justified. Sociologists and social workers have often stated that the populace's habit of charging crime or misbehaviour of an individual Negro, Jew or Chinese to the Negroes, Jews or Chinese as a group is one of the main sources of bias and prejudice. But, far from deploring that habit, Mr. Warren thinks that the attribution of group responsibility has a clearly "healthy effect" and that the incriminated groups should accept that responsibility and try to curb their own criminals. "Any story that cast him [an individual Chinese or Negro] as a bad person or in a bad light" is good for the Chinese or the Negroes. It is up to them "to try to remedy the situation".

We have seen already that Mr. Warren is unburdened by the knowledge or suspicion that news or news selection may be not entirely neutral. Here he reveals himself to be equally innocent of all notions of the real facts of inter-racial life. He conceives society in a medieval fashion of separate ethnic groups having collective hostage-like responsibilities (not legal to be sure, but social or political in nature) for the behaviour of their members. The idea has not occurred to him as yet that, for instance, the high rate of criminality among a discriminated group may be due to the very fact of social and economic discrimination; and that social discrimination in its turn—in the typical

"The identification of Chinese [or Negroes, etc.] when they get into trouble, has a very healthy effect on the whole Chinese [or Negro, etc.] community" (3137)

A "healthy effect"—we imagine—similar to the one that militant white groups in the South expect from other and more drastic measures, based on the same idea of group responsibility, fostered by the same racial identification of culprits and suspects, and destined "to keep them in their place".

5. *Mr. Warren's position.* It is finally of great interest in this proceeding that Mr. Warren, who expounded this theory, is the Daily News "broadcast editor" who is "in charge of the department and its personnel and all of its operations" (1437), who has "a staff of writers and editors who are directly responsible to me and under my jurisdiction, who handle all of the scripts," (1437), who "assumes responsibility for the copy" (1936), under whose "supervision directly" (1439) the standards for the conduct of the FM station by the Daily News (Exh. 2, Sec. 19) were formulated and who testified "that the same men who now service WNEW would service the newscast portion of the FM station if the Daily News ever gets one" (1436).

B. The Challenge to the Rules

6. *The comparative character of the analysis.* Furthermore, the Daily News has repeatedly complained, throughout the hearing, that the rules and principles adopted by the AJC analysts were unfair to it. The first of the challenged principles concerned the coverage of our survey which is limited to one well-defined independent class of news, the so-called "general news." It does not include either society, sport, entertainment, or financial news, nor editorials or opinion columns. To include all the opinion material and special news columns would have so magnified an already difficult task as to put it beyond the practical possibility of achievement. To limit the selection to one category of special news would have left our survey open to the charge of arbitrariness.

The Daily News maintains, however, that the exclusion of its feature and "opinion columns" worked heavily "to its detriment".

The short answer to this challenge is that, concededly, the Daily News did not even attempt to show, by its testimony, the prejudicial character of the alleged error. It is true that Mr. Warren has repeatedly and emphatically stated that

"elimination of sports, and entertainment and the columns, *worked very heavily* to the disadvantage of the News because of the many favorable references to the two minorities in those departments of the News" (3235; *see also* 3236, 3237, 3238).

In making these statements he was, however, obviously unaware—as his cross-examination has shown—of the comparative nature of the AJC analysis. Otherwise, he would have understood that the existence, e.g., of favorable stories in the Daily News sports columns, could not impair the validity of a *comparative* analysis unless it was shown that the Daily News sports columns had *more favorable* stories or *less unfavorable* stories than the comparable columns of the other papers. The very idea of comparing the Daily News to the other papers under survey was alien to the verification survey organized by the Daily News. Its personnel has spent many hundreds of manhours on reading entertainment and sports pages of the Daily News but did not take the trouble of taking a glance at the corresponding columns of the other papers—or at least they so testified, after some hesitation, on cross-examination:

"In reading the other newspapers for the month of February only, we did read the entire newspaper, but let me qualify that answer * * *. No, we did not read the sports pages or the editorial pages or the omitted pages. We were reading *just generally* the news pages in those other newspapers" (Warren, 3268).

Further questioning of the witness brought out that he knew that "this is a comparative analysis" (3269) and that

entertainment and sports, once omitted from all papers, *had to be omitted* from the Daily News as well (*ibid.*). Against this background he was asked squarely:

"Q. Well, did you make *any check to determine whether this particular rule worked to the disadvantage of the News?*" (3269)

and admitted (or claimed) that he had not (3269).

This denial by Mr. Warren actually amounts to the abandonment of the whole charge of *prejudicial* exclusion and makes the further investigation of the charge unnecessary. It may be interesting, however, to point out that in trying to explain or excuse the original charge Mr. Warren said:

"What I thought about the rules is just *the impression* I gained as I went along with the job and as a result of looking at the whole job" (3269).

This illustrates the difference between the American Jewish Congress study and the Daily News recheck. Our main endeavor has been to treat the various papers *equally*, because we knew that the reliability and the significance of a study does not depend so much upon the accuracy of every decimal point of the computations, as it does on the evenness of the reading and coding process, on the equality of the treatment of the samples before the analysis. On the contrary, if their assertions are to be taken at their face value the Daily News personnel begins with reading the whole of the Daily News while limiting the reading of other newspapers to the general news columns; then it gains an "impression—as a result of looking at the whole job" and proceeds to state under oath on direct examination that the rules limiting the analysis to general news "worked very heavily to the disadvantage of the News" (3235, 3236); that "the Daily News is prejudiced" (3237); that the rule "is unfair to the News" (3238), etc. It is not surprising that on cross-examination the whole struc-

ture falls to pieces and the witness reverses himself by stating:

"I was *not* making a check for the purpose of determining what rules were advantageous or disadvantageous in this particular project" (3269)

the "particular project" being nothing less than the examination of the categories "unduly excluded" by the AJC from the analysis.

7. *Other exclusions.* It would be unduly repetitious to examine the other similar contentions in detail and to point to the inescapable conclusion that either the comparison was made but its results withheld from the Commission for reasons easy to imagine, or that the charges of unfairness and prejudice were formulated and sworn to without the slightest attempt at substantiation. It is enough to point out that the exclusion of financial pages from the newspapers other than the Daily News cannot be thought of as prejudicial if it is not shown or suggested that the unfavorable stories in them outweigh the favorable ones. As a matter of fact, it is common knowledge that the opposite is true despite the cagey refusal of Mr. Warren to concede it. ("I am not a financial writer and I do not concede necessarily that financial news is heavily favorable," (3280)). It is clear that if the AJC did include the financial columns of the standard size papers in the survey the Daily News, which does not carry such columns, would have protested much more loudly against the inclusion than it did against the exclusion. It seems to us, at any rate, that our main goal, equality of treatment of the various papers, was better served by the exclusion than by the inclusion of financial news.

As to the exclusion of opinion columns and editorials, not only were they excluded from all papers, but a complete picture of their references would not put the Daily News in a favorable light. It is enough to call the attention to the omission from the Daily News impressionistic sur-

vey of the O'Donnell column "because it is largely on Washington affairs" (3236) and despite the admission that it "contains a lot of news" (3278).

Similarly, the exclusion of short obituaries (3237) has, of course, been applied to all papers. The same hold true of the exclusion of the Queens-Brooklyn edition (3240-3241). Not only has the Daily News failed to produce a single favorable story from that edition only and then to show that the exclusion has worked against the Daily News, but in presenting its theory it has, as usual, completely ignored the fact brought out on cross-examination (3285) that other papers as well have a Brooklyn edition and that if it must be presumed without proof that the Brooklyn edition of the Daily News contained more favorable items, the same presumption must hold true for the Brooklyn edition of the Times. But with their usual disregard for the dictum about the goose and the gander, the Daily News personnel worked on their Brooklyn edition but did not bother to look up the Times counterpart of it. Faced with the charge by counsel for the AJC that he, Mr. Warren, did "not even know how large the Brooklyn-Queens section of the Times is", the witness could think of no better reply than "I do not *think you* know, either."

A few additional words should be said about the alleged exclusion of some pictures. Mr. Warren has charged in this connection:

"Well as Miss Sussman finally made it clear, to me at least, this morning she excluded pictures which were attached to or dependent upon the adjacent type material. No matter how dramatic or outstanding the picture in itself was, its inclusion was contingent on the story which commented on it. In my opinion that kind of rule was highly prejudicial against a newspaper specializing in pictures as does the Daily News."

Then once more Mr. Warren charges the unfairness of a rule because it may *at times* work against the News. He does not ask himself whether or not it may also at times work *in favor* of the News. He refers to the testimony

of Miss Sussman on that topic but he does not care to contradict her statement as to the existence of unfavorable stories "in which Negro faces were prominent but the story was not about the Negroes and it was excluded under the same rule. *I think if the rule is applied consistently that is the most you can hope for*" (3162).

It may be also remarked that hardly any picture can be considered without the caption and that, under the rules of the AJC survey, if the caption is about minorities that is sufficient for the inclusion of the stories. It is only when a picture is published without a caption that it is considered an integral part of the adjacent text and the two, picture and text, are judged as one unit. The rule seems equally fair with respect to standard and picture newspapers. The essential point is, however, that it has been consistently applied to both favorable and unfavorable items. Only if this is disproved or unless some inherent unfairness is shown, a rule cannot be labelled as unfair just because it is *sometimes* applied to the disadvantage of the Daily News.

C. The Challenge to the Findings

8. *The Daily News' own analysis.* To disprove the overall results of our content analysis the Daily News has made a considerable effort. It has devoted 2,000 manhours "to the reading of the News for six months and the other four newspapers for one month" exclusive of "time spent by the attorneys" at the cost of \$15,000 independently of legal expenses" (3215), and produced a number of beautifully bound collections of photostats. It has done all that seemed to be in its power, and thrown into the evidence even the photostats of Miss Sussman's working papers, the hardly helpful reproduction of IBM punch cards and code sheets (Exh. 2, Sec. 41), an enormous number of news items and columns of all kinds—in short, everything but the kitchen sink. The only evidence the Daily News did not offer in the proceeding are the results of the only sensible

arithmetical operation it could and should have made to disprove our charge. That is to say, the results of a computation of their own as to the *overall* proportions of favorable and unfavorable general news items concerning Jews and Negroes and appearing in the five New York City morning newspapers. This was the most simple and most obvious thing to do. One of the authors of the AJC analysis, Dr. Pekelis, has openly and seasonably challenged the Daily News to this undertaking. In answering a question of counsel for the Daily News as to whether or not he entered this investigation "without any preconceived ideas and without prejudice" Dr. Pekelis stated:

"I have a very definite prejudice and a very definite feeling against newspapers, individuals or organizations which are unfair to minorities. I feel strongly about it. But I also feel very strongly about the danger of mislabeling people or organizations as anti-Negro or anti-Semitic because of popular demand, organizational need, or some other erroneous criteria, fallacious appearances and so forth. I feel that it is as important to give a clean bill of health to those who deserve it as it is to label as prejudiced those who are prejudiced. Therefore, I entered this study with a full readiness and full conviction to report back to my constituent organization, saying 'I am sorry, nothing has been found, nothing can be proved, *it just isn't true that the Daily News gives unfavorable treatment to Jews or Negroes. And if anyone, content analyst or sociologist, could show me that our study is erroneous, I would be not only willing but eager and anxious to make a retraction*' (1598-1599).

Now the Daily News has invested 2,000 manhours of work and—if any considerable part of the \$15,000 has gone in salaries—of highly skilled work *to read* the six months of the Daily News and one month of the other four newspapers (3215), making a total of ten newspapers-months (six of the Daily News and four of the others) or a total of 300 daily issues. This means that the Daily News analysts claim to have spent an average of almost seven

hours per newspaper issue. If it is considered that there was no need to *read* every word of the paper as a whole, but that the paper had to be simply examined for the purposes of finding the general news stories dealing with Negroes and Jews, it will become obvious that seven hours devoted to every issue are a perfectly incredible amount of time. To say the least, it could certainly allow for a coding of all *favorable and unfavorable* stories and tabulations of the *overall results*, the only thing our analysis did, and the only thing that could have caused Dr. Pekelis to make the statement he had promised to make: "It just isn't true that the Daily News gives unfavorable treatment to Jews or Negroes."

The truth of the matter is, however, that to count both favorable and unfavorable stories would have been not only the most natural and only sensible thing to do but that *this is exactly the thing the Daily News has done in fact* without giving us the benefit of its findings. Mr. Warren has indeed testified:

"We found a lot of what might conveniently be classified as 'unfavorable' articles in going through the News.

Q. A great many? A. No, comparatively few.

Q. Did you keep any account of them? A. A good number at that.

Q. Did you keep any account of them? A. No" 3267-3268).

And on cross-examination:

"Q. You mentioned having run across a certain number of articles which you thought might be classed as unfavorable to Jews and Negroes in this search that were not in the survey? A. Yes.

Q. Did you include other kinds of items than crimes in that, when you did so, such as divorce cases? A. Yes, I made a pile of pages containing so-called unfavorable stories, neutral stories, and anything that might be remotely interpreted as unfavorable. I made quite a pile of those sheets as we went along" (3300).

He "made quite a pile of those sheets" but the 2,000 hours and \$15,000 just were not enough to make a count of those piles and to compare that count with the count of favorable stories. The Daily News had the curiosity, the time and the patience to find out, for instance, that the number of "missing or incorrect page references" in our survey was six for the six months Daily News period and respectively four, four, one and none for the February Times, Tribune, Mirror and PM (Exh. 2, Sec. 47) and an infinite number of similar minute irrelevant facts showing, in fact, only the random distribution of errors. But the Daily News would have us believe that its people had no curiosity, time, money or patience to count the piles they had already formed, the piles of favorable and unfavorable material and compare the two figures in order to find out what practically the whole content analysis dispute is about—the ratio of favorable to unfavorable items!

9. *The irrelevant exhibits.* Not only did the Daily News fail to produce the full results of its extensive and intensive study but its piecemeal evidence in fact supports our conclusions. Before examining this evidence, it is necessary to dispose of some exhibits which are completely irrelevant to the content analysis issue and can only obscure it. These irrelevant exhibits are:

a) EXHIBIT 2, SECTION 40; SUBDIVISION 2 (ENTERTAINMENT) AND SUBDIVISION 3 (SPORTS) (SO-CALLED VOL. III).

Our content analysis was limited to the category of "general news". The reasons for this limitation and the lack of prejudice to the Daily News are set forth in detail in the previous section of this Memorandum. It is, of course, impossible to take into account the columns offered by the Daily News which do not include the corresponding features from the other newspapers and make that type of comparison upon which the analysis as a

whole is based. The first subdivision of this Section 40 will be discussed below.

b) EXHIBIT 2, SECTION 41 (SO-CALLED VOL. I).

Contains working papers of Miss Leila Sussman, excerpts from the Record and a photostat of some of our Tables. May be related to the already discussed "unfairness" of the AJC rules of analysis but can certainly not show any error in our results.

c) EXHIBIT 2, SECTION 42 (SO-CALLED VOL. II).

This volume contains the photostats of the Daily News stories included in our survey. The Daily News has not examined either its own or our witnesses on this volume, which was made superfluous for its purposes partly by the first subdivision of Section 40 (Vol. III) on which Dr. Pekelis was examined (2871, 2913, 2948) and partly, as counsel for the Daily News stated (3188), by Exhibit 2, Section 43 and Section 44 on which Miss Sussman was cross-examined (3190 et seq.).

The volume is, however, of interest to us, because it contains a fairly full collection of the Daily News items used in our survey and proves that if there have been mistakes of classification of this material they have been made by us in favor of the Daily News and that their correction would work to the disadvantage of Daily News comparative position. We shall discuss this point later.

d) EXHIBIT 2, SECTIONS 45-50.

These charts purport to show differences between punch cards, original tabulations, tabulations made by the IBM, and run-offs by the Daily News. They also purport to show the number of incorrect descriptions of a story, missing dates, missing or incorrect pages or missing columns. The only thing these figures do *not* purport to show is again the only one which would be relevant to the issue before us: the distribution of these errors between the favorable

and unfavorable categories. The Daily News personnel has performed as shown by these exhibits and Mr. Neale's testimony (3309 et seq.), the most complicated mathematical operations. But they did not attempt—or, to be more exact, so they told the Commission—to find out whether the errors worked to the advantage or disadvantage of the Daily News. Not that the Daily News personnel was not aware of the potential usefulness of such a showing. In examining the Daily News challenge to the five-inches-rule, we have already seen that in *that* case, in which they felt that a showing of over-all prejudice was possible, they embarked—and justifiedly so—upon a rather complicated computation in order to show prejudice to them, and proved to be perfectly capable of following the relevant and essential distinction between the two types of mistakes—those detrimental and those advantageous to the Daily News (3318-3321). It is true that we have also seen that in the only case in which this sensible and relevant attempt was made it was predicated upon a misunderstanding of the five-inch-rules admitted by Mr. Neale himself on cross-examination (3322). But the essential point is that Mr. Neale, who is well aware of the distinction between detrimental and advantageous errors and between favorable and unfavorable items, has failed to apply that knowledge to the problem before him. He has put into evidence the irrelevant data on the distribution of mistakes among newspapers or between missing pages and missing inches, but has not produced the data having any bearing on the alleged inaccuracies of the over-all results submitted by us. This failure, coupled with his knowledge of the problem and his attempts to do a relevant job in other fields (five-inch-rule), gives rise to the fair inference that he did try to do the same job on all the errors *but failed to find prejudice, because there was none.*

As far as we are concerned we have not followed Mr. Neale in his attempt to find the percentage of inaccuracies in the first study to which alone these exhibits referred: we eliminated all of them in the second study for which, incidentally, no punch cards were used at all.

e) EXHIBIT 2, SECTION 51.

Contains only editorials. We have considered and discussed those subsequent to the Fall of 1938 and thus falling within the period covered by our study of the Daily News opinion material.

f) EXHIBIT 2, SECTIONS 52, 53, 54.

These three volumes have certainly no relevance to our content analysis. They contain material which either because of their source (opinion, sport or entertainment columns) or because of their dates could not be considered in our study. The few occasional photostats which represent general news falling under the period under survey have been either included in our analysis or have been claimed as missing by the Daily News in its Exhibit 2, Sections 40, 43 and 44 which will be discussed below.

g) EXHIBIT 2, SECTIONS 55 AND 56.

These documents deal with Jimmy Powers columns, not with our content analysis. But we take this opportunity to state that on the question whether or not Jimmy Powers has contributed to racial tensions in the field of baseball, we are perfectly satisfied to rely on the record itself and particularly on the masterful analysis made of his contribution by Dr. Dan W. Dodson, Executive Director of the Mayor's Committee on Unity of New York City (1474 *et seq.*). We may perhaps be permitted to reiterate our conviction that, from a moral viewpoint, three truthful or decent statements cannot excuse one lie or vicious attack and that, from the viewpoint of the public morale, what we called the Gresham's law of ideas (bad ideas chase the good) holds true in the field of sports as well.

h) EXHIBIT 2, SECTIONS 57, 58 AND 59.

These exhibits—or rather some of them, because others only perpetuate stereotypes and are neutral *at best*—prove

that from time to time the Daily News ran favorable stories on Negroes and Jews. This is not disputed; it may sound monotonous but it is still true that ours is a *comparative* analysis aimed at the finding of certain ratios. To this problem the tear sheets have produced no relevance whatsoever.

10. *Errors, pro and con.* We have now to examine the documents introduced by the Daily News which can support its challenge of the accuracy of our analysis. These are Sections 39, 40 and 42 (respectively the so-called Vols. IV, III and II) and Sections 43 and 44 of Exhibit 2.

a) As to the first two volumes, Sections 39 and 40 of Exhibit 2 (so-called Vols. IV and III), Dr Pekelis testified in great detail (Vol. 18 of the transcript) and has shown that out of 291 stories relevant to the study and contained in the pertinent sections of these volumes, the classification of 57 items called for a rectification to the *advantage* of the Daily News and 25 for a rectification to its *disadvantage* (2872).

b) As to *Section 42* of Exhibit 2 (so-called Vol. II), it contains mistakes the rectification of which would work to the *disadvantage* of the Daily News.

Miss Sussman had begun to testify, on cross-examination (3184 *et seq.*) on part of these items, but was interrupted by a recess and that line of questioning was not resumed (3188).

The nine stories from the Daily News which require corrections are the following:

January 14, 1945, p. 41: A picture "Heroes" was classified as favorable. There are no known Jewish names in the caption of the picture. This is not a minority story.

January 23, 1945, p. 7: A story "1 Dies, 8 Felled In Mott Street Fire" was classified as favorable. It refers to a man clearly identified as Jewish who had died in a fire. Two rabbis performed the death prayers. It is a neutral story.

May 7, 1945, p. 6: A story "Wife Sketches Nude In Court, But Not In Oils" was unduly omitted from the Quantitative Content Analysis dated September 24, 1946, and should be classified as unfavorable.

January 3, 1946, p. 18: A story "UNRRA Chief Fears Exodus Into Palestine" was classified as favorable. The story reports the charges against the Jews by General Morgan. This is an unfavorable story.

January 6, 1946, p. 22: A story "Three Girls Face Trial As Muggers" was classified as favorable. Story alleges Negro girls are muggers. Story is unfavorable.

January 3, 1946, p. 4: A story "Newly Hired Maid Held In Gen Theft." The servant is described as Negro. The story is unfavorable. Was unduly omitted.

February 21, 1946, p. 21: A story "Hallelujah! Negroes 5 Days in Prayer Against Eviction" was classified as favorable. Prayers part of protest against eviction of a Negro minister from his church. Must be classified as "Neutral".

March 17, 1946, p. 4: A story "Age Wins Booty Contest." Represents the holdup men as being Negroes. Is unfavorable. Unduly omitted.

March 29, 1946, p. 14: A story "Yank Wounded in D. P. Rioting" was erroneously classified as being favorable. It is a story about racial antagonism and clashes and must be classified as unfavorable.

c) Finally, there are Sections 43 and 44 of Exhibit 2. These sections purport to include Daily News stories classified as unfavorable. In cross-examination of Miss Sussman (3190 et seq.) counsel for the Daily News challenged the classification of seven stories. Of these three stories (1/8/45, p. 3190; 5/17/1945, p. 3191; and 1/1/1946, p. 3192) had been conceded before and are included in the computation concerning Sections 39 and 40 of Exhibit 2. In a fourth story (1/23/1945, p. 3191) the "mistake" consisted in the fact that it was included under Negro rather than

Jewish column. With respect to two more stories (1/7/1946, p. 3192, and 1/10/1946, p. 3193), the challenge was successfully refuted by the witness and, finally, with respect to the one story (1/15/1946, p. 3196), mistake was conceded because it was not sure that the criminal's name, Fomkin, was Jewish.

At the same time counsel for the Daily News remarked in connection with the sections now being discussed:

"Q. You overlooked a couple of Feldman stories on us to February 15, February 24. Do you want to examine them?"

Mr. Maslow: I think it demonstrates, Mr. Examiner, that the errors distribute themselves at random.

The Witness (Miss Sussman): I don't know how we managed to overlook this. It is an unfavorable story and very prominent."

11. *The random distribution of errors.* Taking the corrections as a whole it would appear, on the basis of the documents introduced by the Daily News, that there are 58 corrections to be made to the *advantage* of the Daily News (57 from Sections 39 and 40; plus 1 from Section 43), and 36 corrections to its *disadvantage*. It must be considered, however, that these corrections are based not on additional random material selected *objectively*. On the contrary, the material in question was *avowedly* selected with the sole purpose of showing only corrections to be made to the *advantage* of the Daily News.

It has been conceded in this proceeding that the Daily News *did not* produce all of its working papers. Counsel for the Daily News had insisted (see for instance 1682 et seq.)—and we have unhesitatingly complied with his requests—that every bit of Miss Sussman's working papers be put at his disposal, regardless of whether or not they were relevant to the survey submitted or referred to abandoned projects (1683). But the Daily News felt no legal or moral compulsion to reciprocate by putting at the disposal of the Commission the stories which the News

"classed as unfavorable" but which *"were not in the [AJC] survey"* (3300). These stories, variously described by Mr. Warren as "a lot" (3267), "comparatively few", "a good number at that" (3268) and "quite a pile" (3300) and which would necessarily have shown that the AJC had erred in favor of the News in "a lot" of times, in a "good number" of cases, in "quite a pile" of cases—these stories "were not in these [Daily News Exhibits] volumes (3268). The 36 corrections detected in the material presented by the Daily News were found there because they happened to be on the sheets on which there were stories which the Daily News claimed in its favor. On the basis of their experience in the collection of items, often minute, which comprise the content analysis, Dr. Pekelis and Mr. Warren made substantially identical statements as to the possibility of discovering more and more material in additional reading:

"If we go over the material and make a third reading we may discover more stories, we may inflate this Gallup sample" (Dr. Pekelis at 2958). "Every time we went through this we scooped up another scad of those stories she had not seen" (Mr. Warren at 3283, 3284).

If such successive readings are made in an unbiased manner, and if *all of the findings are introduced*, the results will not vary. The scientific possibility of Gallup polls, of random sampling, of straw polls, depends on the statistical certainty of random distribution of the results of a second, third, or fourth reading. The second study of the AJC had a corroboratory meaning just because it brought about an increase in the size of the sample, i.e., in the absolute number of stories. To a question by counsel for the Daily News as to whether or not his conclusions were somewhat changed by the corrections made at the hearing, Dr. Pekelis testified:

"No, my conclusion is not changed, because even from the selected material which I had at my disposal in making these additions and selected not at random but

for a given purpose of bringing out the omissions which worked to your disadvantage, I have been able to select at the same time a considerable number, exactly 25 stories, which will increase the number of stories working in the other direction.

What I actually did yesterday night was a third reading, bringing out additional stories, I believe, of a total of 82, of these 57 were rectifications in your favor and only 25 in our favor.

This means that the additional stories of the third reading were not in the same proportion as the first but this is due, I am confident, to the fact that I was not handling the sample as a poll or a random selection but the number of exhibits in which, legitimately so, you have given us a selection of stories which worked to your advantage.

Even in that material I was able to find 25 stories important in size which worked in the other direction.

If I go over and make a third reading we may discover, we may inflate this Gallup sample and instead of having 900 stories as in the beginning or 1,300 as now we may reach 2,000 stories.

I feel, Mr. Caldwell, that the more you check a study the better it is. It is an endless proposition and the bigger the sample the better it is, but I feel much more secure of the study today than I did in July, as I had a second corroborating study, and if I had had a third study I am confident that the pattern would remain the same, just as by, as always, by increasing your sample and by making your recheck when you have substantially the same result you feel more confident" (2957-2961).

12. *The withheld analysis.* On this point Mr. Warren did not testify. He did not say what the over-all results of his reading were. He maintained in fact that he had no over-all results because it was impossible to get them. The failure of the Daily News to present findings on its own on ratios or proportions (except on the five-inch-rule point!) was indeed so conspicuous that counsel for the Daily News felt the need to volunteer a justification. On direct examination of Mr. Warren the following colloquy occurred:

"Q. Mr. Warren, why didn't you undertake a second or substitute survey? A. That is, why didn't we attempt to make a complete survey as did the American Jewish Congress—is that the question?

Q. That is right. A. First, I will give the secondary reason, to get it out of the way. That was sheer physical work. There would have been too much bulk involved. Had we read all of the six months of the other newspapers the physical job would have been too much for us. As it was, we were only able to read that one other month of the newspapers.

The main reason why we didn't attempt to duplicate the American Jewish Congress survey was what in my opinion was the impossibility of following the Sussman procedures and rules with any logic or common sense.

I would be glad to explain my reasoning on that.

Q. Will you state your reasons? A. First, I don't believe a survey of the type she made can be made under the rules that she drew up or under the rules that anybody else would draw up with a view to showing the bias in a newspaper based upon news stories.

The very essence of a news story is that it is objective and that it is neutral. This is the very essence of news" (3241, 3242).

We have already seen that the claim of Mr. Warren as to the impossibility of a distinction between favorable and unfavorable news is wholly unwarranted. The so-called "secondary reason" given by him now is equally untenable. Whether or not the Daily News had the financial and physical possibility of reading the four newspapers for the remaining five months—there was nothing to prevent it from disclosing to the Commission the over-all ratios found by it for the newspapers its personnel *did* in fact read and for the periods it *did* cover: there was nothing to prevent it from giving the ratios for the entire six months period for the Daily News, plus those for the month of February for the other papers. There was no avowable reason to prevent that disclosure. The failure to make it speaks for itself.

The obvious fact is that the News has withheld from the Commission not only "the piles" of "unfavorable items" it had gathered (both the gathering and the withholding have been confessed: 3267, 3268, 3270) in its extensive and expensive (3215) control survey, but also the *over-all results* that a simple counting of these piles *must* have and has yielded. This concealment is in itself a confirmation of our only basic contention: viz., that, whatever a possible increase in the total number of stories to be extracted from the sample period may be—the ratios of the distribution of those stories into favorable and unfavorable classes will not vary from those ascertained by our content analysis.

V. The "Crime Comes First" Doctrine of Journalism

1. Newspaper size and newspaper policy.

The last basic objection raised by the Daily News concerns the validity of any comparison between standard size newspapers and tabloids. It is true that in all its aspects, the AJC comparative study takes into account the difference in size of the newspapers being compared. We have done it when we have compared the number or length of favorable and unfavorable stories within *the same newspaper*; we have done it when we have established their ratio to the total number or the total length of all news items *in that same paper*; we have done it, finally, when we have established the ratio that the number or length of favorable stories in the Daily News bears to the number or length of favorable stories in other papers; before establishing that ratio we have *adjusted* the size of the different papers and have established an "adjusted ratio"; we have in other words answered the question "What would be the ratio, etc., if the two papers were of the same size?"

The Daily News maintains, however, that the procedure is essentially unfair in that it neglects *the alleged influence which size necessarily exercises upon policy*. This view.

point was clearly expressed both in the questions asked by the counsel for the Daily News and in the testimony of its witnesses. The following is taken from the direct examination of Mr. Warren:

"Q. Take the premise on which Table 35 rests, namely that you can adjust the average between these several newspapers, standards and tabloids, has it not worked out fairly to the News? A. That Table 35 is based entirely, rests entirely on the so-called adjusted average formula. The table compares the number of column inches devoted to favorable treatment of Jews and Negroes appearing in the News with the adjusted average of column inches used in the other New York morning newspapers dealing with the same subject matter.

Now, this table assumes that if a publisher has half as much space to devote to unpaid content that he would publish exactly the same number of stories on the same subject matter but he would decrease the length of each story by one-half.

That conclusion is absurd because the news stories have relative values and such a curtailment of space, a curtailment by one-half would cause a publisher to give totally different values to the various stories and to continue to carry some but to eliminate others rather than reducing each story by one-half" (3234).

This rather general statement about the influence of size on the selection of the news sounds rather plausible at first blush. Nobody would, of course, claim—and our analysis did *not* assume it—that a smaller newspaper would have to carry all the stories a larger one carries, only reduced in size. We fully realize that a smaller paper would drop altogether some individual stories of minor importance, be they crime stories or stories of achievements. On the other hand, the Daily News would not seriously maintain that it is, as Mr. Warren said at one point, "absurd" to assume that a proportionately smaller newspaper will attempt a proportionate reduction in the size of its individual items. As a matter of fact, both counsel and witnesses for the Daily News have proceeded, upon the

opposite theory while launching their attack on another aspect of the AJC study. On that occasion they have proudly *claimed* the Daily News' *ability to condense*.

"Q. Do you attribute in part the success of the News to the fact that it has learned how to condense stories? A. I certainly do" (3240).

This flagrant contradiction is rather amusing but not very important for the specific issue here involved. It has a general background importance because it shows what the Daily News analysts obviously thought the correct technique of "piecemeal attack", which did not call for either a statement of a consistent theory or the presentation of over-all results, not only gave them the freedom of shifting their ground but involved some inevitable embarrassment of self-contradiction as well. As to the specific question, however, there is no real disagreement: a tabloid will both omit some stories altogether and "condense" others. But this agreement does not bring us an inch (not even a "column inch") closer to the solution of the only relevant problem: *did the size of the Daily News compel it to print proportionately more unfavorable and less favorable stories about Negroes or Jews than the other morning newspapers in New York City?* Why does the omission of some stories and the condensation of others require not only a change in the *total number* of the stories or in their *average size* but also a *change in the ratio* between, for instance, crime stories and news on education. The emphatic statements by Mr. Warren, quoted until now, sounded persuasive as far as they went, but contained no answer to, or suggestion bearing upon our crucial problem.

2. The superior claim of crime to news space.

An answer was, however, attempted in another portion of Mr. Warren's testimony. After having "laid the ground" for the acceptance of a distinction between tabloids and standard size newspapers, counsel for the Daily News asked Mr. Warren to make a further step:

"Q. Does a newspaper like the Times or the Herald Tribune have categories of stories which are either not carried as such by the News or not carried at all? A. Yes, due to the volume of space at the disposal of the standard size newspapers, which is not at the disposal of a tabloid newspaper, they have open areas to devote to certain classifications of news which the tabloid does not have *and among those classifications are stories favorable to not only minority groups but to community activities of various groups of all kinds*" (3249).

The real theory of the Daily News comes thus into the foreground. The "selection" which Mr. Warren had in mind in his general statements is not a selection of *individual* items but a selection of news *categories*. Because a tabloid has less space than a standard newspaper and because crime stories seem to be a basic staple commodity to journalism (on cross-examination, 3276, Mr. Warren said: "Crime news is pretty generally conceded to be a category or type of news in the newspaper business"), it is compelled to drop another classification, that of favorable stories. An economist would say that, in Mr. Warren's conception, the curve of newspaper supply of crime news is "rigid" with respect to space while that of favorable news is quite "elastic." In other words, favorable stories are dropped "if space does not permit" but crime stories are a prime necessity, the need for them is "rigid", if not imperative, and they must be satisfied first. This policy is followed with respect to *all* crimes and *all* stories "favorable to not only minority groups but to community activities of various groups of all kinds" (quoted statement by Mr. Warren on p. 3249).

In cross-examining Dr. Pekelis, counsel for the Daily News followed the same line. He has done his best to prove the existence of that policy. His attempts are worth examining in detail. He began by obtaining the witness' ready confirmation that the News printed less general stories than the Times (10,192 as against 33,670; p. 2962)

and used for its general news less column inches than the Times did (111,748 as against 326,690; p. 2961).

Thereafter, the Daily News counsel endeavored to obtain the witness' confirmation that despite that very considerable difference in the general coverage the News "printed slightly more crime stories than any of the other newspapers" (2966). While Dr. Pekelis did not want to confirm Miss Sussman's figures (News 72, Mirror 67, Times 66, Herald-Tribune 29 and I'M 12) quoted to him by Mr. Caldwell (2966) because they were not a part of the study presented by the AJC and because they were limited to too small a period of time (2967) he did not have the slightest difficulty in accepting Mr. Caldwell's repeated assurance that "in spite of the (Daily News') size the number of crime stories stays about the same as the other newspapers" (2968) and that "the News does publish more crime stories or about the same number of crime stories as the other leading New York newspapers" (*ibid.*).

Having obtained Dr. Pekelis' wholehearted confirmation ("Yes, at least as many") and having dismissed as irrelevant the witness' failure to commend that policy ("Unfortunately, maybe more", 2968), Mr. Caldwell proceeded to gain Dr. Pekelis' agreement with the subsequent step of his reasoning: if the total number of (or space devoted to) all stories is less and the number (or space) of crime stories is the same, "it means that other categories of stories are dropped, does it not?" (2968). Here again, Dr. Pekelis readily agreed that "by devoting more space and stories to crime, they have to limit other types of stories" (2969). But Mr. Caldwell was determined to give the fullest showing of the "crime before achievements" or "business before pleasure" policy of the Daily News. Some of the subsequent colloquy is revealing of his determination:

"Q. Isn't it the fact that in other types of stories [other than crime], that the News has less than other newspapers? A. Yes.

Q. That is than the Herald-Tribune or the Times?
A. Because they devote more time to the crime section or anything of the kind" (2969).

"Q. Now, if you will assume that the number of crime stories, total number of crime stories in the News is the same as in the New York Times, have you any quarrel with that assumption, the total number of crime stories for the six months in question is the same in the two papers or that the News is greater whichever you wish? A. Yes" (2971).

"Q. Do you know, for example, whether *regardless of race or religion the News publishes less stories on personal distinction than does the Times?* A. It may very well be" (2972).

"Q. Do you know whether it [the Daily News] publishes less stories under any of your four [favorable] categories, regardless of race or religion than does the Times? A. It may very well be. I have made no study about it. Probably that is correct" (2973).

Dr. Pekelis was obviously so surprised by this open Crime First attitude in an applicant for a radio station that in his turn he endeavored to make sure that Mr. Caldwell and he were speaking about the same thing and directed a question to Mr. Caldwell:

"May I be allowed to ask you if I understood your previous questions to which I have answered affirmatively, correctly?

I don't want any misunderstanding.

You said in substance that because of the greater space devoted by the Daily News in general, not Jewish or Negro crime but to crime in general, the general proportion between favorable and unfavorable news about all people is different in the Daily News than it is, for instance, in the New York Times.

By Mr. Caldwell: You answered that question."

In other words, the Daily News confronted with the evidence of its overwhelmingly unfavorable treatment of minorities, answers in substance: "It is not the minorities

alone that I am treating in this way, it is everybody. Regardless of race or religion, if I have to choose between a crime story and a human betterment story, I'll take crime or sex any day. I am quite free from bias." As Dr. Pekelis has put it to Mr. Caldwell, without objection on the latter's part, the Daily News' explanation is that its policy of preference for unfavorable stories "is not something directed against Jews or Negroes but directed against all people" (2978). We shall now examine how accurate and how relevant this contention is.

3. Crime news and the minorities.

The Daily News itself has furnished the evidence of the inaccuracy of its contention. The record shows in fact that the alleged general policy of preference for the crime stories, although possibly a contributing factor, is *not the sole cause* of the disproportion ascertained by the AJC survey. We have already examined the Daily News theory as to the "healthy effect" of the identification of criminals as belonging to a given minority group (3297, 3298). On the other hand, other newspapers believe that "when race hate explodes into violence the outbreak is prepared for by thousands of unrecorded, unremembered acts and words of discrimination", that the press "has a special and heavy responsibility not merely editorially but in its treatment of the news" and that this responsibility is evaded both where Negro news is printed in segregated columns and when "discrimination is less flagrant but Negroes are often identified, whereas members of other races are not" (N. Y. Times Editorial August 11, 1946, entitled "Race in the News", Exh. 19, Sec. 34, as offer of proof). This shows, rather conclusively, that there is not only a difference, claimed by the Daily News, among ratios of *all* crime news in the various papers but also a headlong conflict of policy as to racial identification of the criminals. This conflict was bound to cause a difference among the ratios of minority crime news in the same papers, because the AJC

analysts have coded stories about crimes committed by members of minority groups only when it appeared from the stories themselves that the culprits were members of such groups.

It may be conceded that the AJC was not particularly interested in finding out the degree to which the policy of emphasis on crime and other unfavorable stories was directed against Jews and Negroes and the extent to which it was directed against all people. From long experience, the American Jewish Congress has gained the full awareness that these two policies are always indivisible although their dosage may vary from time to time and place to place. It is in fact this indivisibility which justifies our conviction that our struggle is waged *not for minorities alone*. The fact that a crimes sheet is bound to reveal itself, sooner or later, as a Jew-baiting rag as well, or that an anti-Semitic gang is bound to attract sexual perverts and crime addicts is only one facet of the complex Jewish experience. The great tragedy of Jewish history lies in the propensity of criminals, traitors and enemies of freedom towards anti-Semitism. At the same time, its great hope lies in the awareness that the invincible human striving for a better world cannot be achieved without a rejection of racial hatred.

This basic indivisibility of human betterment and freedom from prejudice is mirrored in the comparatively small area involved in the present proceedings. No paper which treats crime reporting as a "prime necessity", at the expense of community news and individual achievements can really fight intolerance or serve human good-will. No paper which refuses to serve the struggle against discrimination by dropping, for instance, the racial label from its crime stories can really serve the general cause of "human betterment" which, in the words of the National Association of Broadcasters, is an essential part of the public service required from the radio licensees.

This general anti-minority effect of any anti-educational pattern of news is particularly clear when crime reporting

is involved. It is a well known aspect of prejudice that crimes committed by persons identified as belonging to a specific ethnic group are charged by prejudiced opinion to that group and its special characteristics, rather than to human nature, or environment, or moral failure. Hence, a white Christian criminal is just a *criminal*, but a Chinese, Jewish or Negro criminal is, to a lot of people, a *Chinese criminal*, a *Jewish criminal* or a *Negro criminal*. Mr. Warren may think that this has a "healthy effect" and is a check on criminality. Students of society know that it increases prejudice, discrimination and furthers criminality.

4. Crime reporting and the public interest.

Finally, we earnestly urge that a general policy of news selection and the preferential treatment of crime and sex are certainly *not less relevant* to the determination of "public interest" in the grant of a radio license than the attitude of a newspaper towards minorities, from which, as we have seen, it is not readily separable.

The Commission will not be tempted—we are sure—to follow the Daily News in its theory that its policy of selection is a necessary consequence of its tabloid size. The Daily News has not presented a single argument to support this contention. Its witnesses stated the doctrine but did not explain it, and Mr. Caldwell's repeated attempts to have Dr. Pekelis concede it culminated in the following statement by the witness:

"The Witness: Mr. Caldwell, you want me to say whether or not the distribution between favorable and unfavorable items depends on the size of the paper. I repeat my belief is that it depends essentially on a general policy and I can very well imagine a small paper which has exactly the same proportion [between favorable and unfavorable news] as the New York Times has, and I could, with some effort of imagination, visualize a larger paper having the same proportion as the Daily News."

If the Commission accepted the contention that small papers *must* carry a greater proportion of crimes because crime *must* be reported first, it would give its sanction to a "Crimes-Comes-First" doctrine of journalism. It may be perfectly true that, in the newspaper trade, "Crime Pays Best" is a sound maxim and that, therefore, crime-and-sex must come first, if large profits are to be made.

Now we do not begrudge profits to those who know how to make them. But we believe it would be highly unfortunate if a confusion arose between commercial expediency and "public interest, convenience and necessity." We are not surprised that the Daily News claims that its crime propensity in the selection of news is consistent with "the public interest" and that it is not due to the pursuit of worldly advantages but is a fatal consequence of the tabloid size. History has seen all kinds of extravagant claims made by, or on behalf of, people successful in business. Cotton Mather maintained that business success is necessary "to glorify God." And Richard Baxter taught that "if you * * * choose the less gainful way, you * * * refuse to be God's steward." These claims did not always sound unconvincing. The danger of confusion between what is profitable and what is just has always been great, whenever value judgments were entrusted to men. But we believe we are safe in predicting that the Commission will avoid the obvious fallacy of accepting a "Crime-First" theory as a justification of an editorial policy of a newspaper seeking the privilege of a license that the public will grant in the public interest only.

5. Balancing private profits and public trust.

The Daily News has well defined the function of a radio station when it referred to its power "to entertain, instruct and inform". This formula contains, in a nutshell, the contrasting factors governing the radio industry. Unfortunately, instruction and information are not always entertaining, and entertainment is not always instructive or in-

formative. It is also obvious that people, by and large, prefer to be entertained than to be instructed or informed and that there is much more money in entertainment than there is in instruction or information. This is, in short, the whole difficulty of a public service which relies for its operation on a profit making industry. It is generally recognized that the dependence of the licensee on the advertiser—who is vested with no public trust and who therefore has no reason whatsoever to prefer instruction to entertainment—is the greatest danger to the well-balanced program which is the main aim of the present endeavors of the Commission.

To achieve its aim the Commission has put its main reliance upon the encouragement of sustaining non-commercial programs. The effectiveness of this device is based on the expectation that a licensee will follow a different policy in the sustaining part of the program from the one that is followed by the advertisers. It is obvious that, in turn, this expectation is based on the assumption that the licensee is a person conscious of its public responsibilities and capable of reconciling, on a high level of public interest, the existing popular desire for soap opera, crime, or other types of popular entertainment with the "human betterment" of which the National Association of Broadcasters spoke in its congressional testimony. Unless the licensee is capable of that reconciliation, the ratio of sustaining to commercial programs, on which the Commission puts its reliance for the improvement of the present situation, will mean in fact very little. The licensee who puts "entertainment" far above "betterment" will use the sustaining time for the same purposes for which the advertiser uses the time he buys: to build up following, to increase the station's popularity and to build an invaluable "stay-tuned-to" habit.

This is, however, a newspaper's dilemma as well. Entertainment and human betterment are not the functions of radio alone. In the newspaper industry, as well as in radio, there is more money in entertainment, crime, sport and

sex than in education, instruction, information and betterment. In both press and radio, it is a question of balance. A man who knows how to resist the temptation of the line of least resistance and how to preserve the supremacy of constructive news over destructive newsy-ness can be expected to be able to follow the same policy in the field of radio. And vice-versa, those for whom the temptation of easy news has proved irresistible in print will hardly be able to resist it on the air. When the Daily News says that it has printed more unfavorable and less favorable news about Negroes and Jews than the other newspapers not because of an anti-minority bias but because of its over-all policy towards news in general, when it denies that a newspaper devoted to crime and sex exclusively would give a warped view of a community, and when it explains its preference for crime news by saying it is of higher "newsworthiness", at the same time admitting that what is newsworthy in print may be newsworthy in the air (3303), it shows its inability to balance entertainment and betterment on a sufficiently high level of public service and proves, consequently, its unfitness for a position of public trust.

VI. Conclusions

The position of the AJC in this case can be summarized as follows:

1. The necessarily limited access to broadcasting makes it certain that a genuine freedom of the air cannot be achieved through the device of a free market. Governmental regulation can and must be made a vehicle for the achievement of that freedom. Under the American system of radio regulation, which vests in the licensee a vital public trust, the Commission can perform that task only through a careful selection of these licensees. The criteria of selection cannot be limited to technical and financial qualifica-

tions. A responsible treatment of news and a lack of racial and religious bias are the minimum requirements to be met by an applicant. The intent of a newspaper applicant to carry over to the air its newspaper policies justifies their investigation by the Commission.

2. The editorials and opinion columns of the Daily News in the last eight years have consistently conveyed a distorted image of American Jews entrenched in positions of power and dominated by an international racial solidarity which tends to create a conflict between them and those who put American interests first. Jewish "racial faults" on the one hand, and normal racial antagonism on the other, can be eliminated according to the Daily News only if the Jews adopt the solution unwelcome to most of them, of abandoning their religious and ethnic individuality through intermarriage. This picture is unfair to Jews and to American society. Its consistent presentation tends to increase interracial tensions. In presenting this picture the News has used false news "scoops" which it had not checked in advance and which it refused to retract.

3. The Daily News has printed a much greater proportion of news items unfavorable to the Jews, and particularly to the Negroes, and a much smaller proportion of news favorable to these minorities, than the other New York City morning newspapers of general circulation. This pattern of news distribution is a further cause of prejudice and tension.

4. The Daily News has failed to show the impossibility of a content analysis, or the unfairness to it of the rules followed in the AJC study. It has conducted a control study but it has failed to reveal to the Commission its over-all findings. The omissions shown by its piecemeal attack have distributed themselves at random and do not impair the validity of the AJC over-all conclusions about the proportionately heavier emphasis on crime and unfavorable news in general given by the Daily News.

5. The assertions of the responsible executives of the Daily News to the effect that the publication of items such as the so-called Patton story are not inconsistent with standards of responsible accuracy; that the need for crime reporting must be fully satisfied before communal or individual achievements can be reported; that racial identification of criminals has a healthy effect on the community; and other statements of similar import; show that not only the past behavior but the present convictions of the Daily News render it unfit for a position of public trust.

Accordingly, we urge the Commission to deny the application of the Daily News for a permit to construct and operate an FM radio broadcast station in New York City.

Respectfully submitted,

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BEFORE THE
Federal Communications Commission
Washington, D. C.

Docket No. 6175

In re Application
of
NEWS SYNDICATE CO., INC.
New York, New York
For Construction Permit for an FM Station.

MEMORANDUM

in the nature of proposed findings submitted at the
direction of the Federal Communications Commission

by the
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